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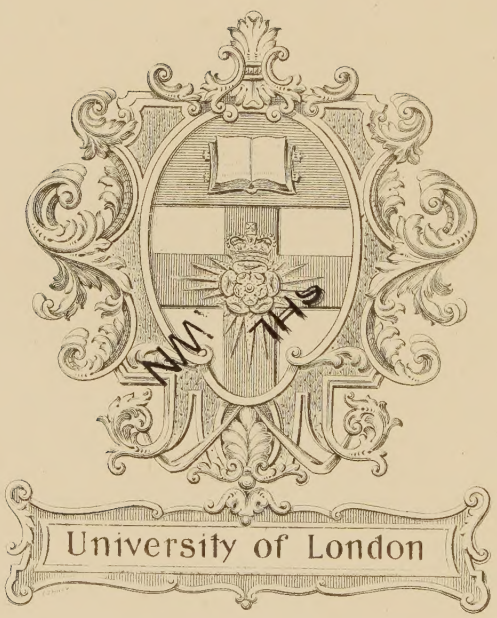

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THE BRITISH YEAR BOOK OF INTERNATIONAL LAW

Affiliated to the British Institute of International Affairs

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW

1923–24

FOURTH YEAR OF ISSUE

LONDON
HENRY FROWDE AND HODDER & STOUGHTON
THE *LANCET* BUILDING
1 & 2, BEDFORD STREET, STRAND, LONDON, W.C. 2

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PRINTED 1923 IN GREAT BRITAIN BY R. CLAY AND SONS, LTD.,
BUNGAY, SUFFOLK.

BIBL. LONDIN. UNIV.

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THE DOCTRINE OF LEGAL EQUALITY OF STATES

By P. J. BAKER, M.A.,
Fellow of King's College, Cambridge, late Whewell Scholar in International Law.

It may well appear to the general student of international law that the present study is no more than a controversy about the use of words which, while it may be of academic interest, is of no practical importance. This may seem still more to be so when the main propositions which will be put forward have been stated.

A certain number of years ago it would, perhaps, have been true that the doctrine of the legal equality of States, as set forth in text-books of international law, was not of practical importance. But in the last few decades this doctrine has passed from the sphere of pure theory into that of legal actuality. As long ago as 1887 it was used by Geffcken in the discussions of the Institute of International Law to demonstrate the illegality of pacific blockade.[1] In 1897 it was the basis of the protest made by Greece against the action taken by the Concert of the Powers. In 1902 it was used by the Foreign Minister of the Argentine as the basic principle of his famous doctrine about debt. In 1907—and this is certainly the occasion when it was of most practical importance—it constituted the whole foundation of the case made by the Brazilian delegate to the Hague Conference against the constitution proposed for a Permanent Court of International Justice. The result of his appeal to the doctrine of equality was that it proved impossible to secure agreement on the vital question of representation in the proposed Court, for the smaller Powers rallied to his support, and united in declaring that they would reject any proposal put forward by the Great Powers that was not based on absolute equality of representation. This was a severe set-back to the whole movement towards international organisation, of which the Hague Conferences were but a part.

Since the creation of the League of Nations and of the international political institutions of which the League consists, it is surely

[1] *Annuaire de l'Institut de Droit International 9me Année* (1887–88), p. 293.

self-evident that such a doctrine of legal equality, if it is made to bear the meaning attached to it by Geffcken, Drago and Barbosa, has now become of real and pressing importance. We are, moreover, on the threshold of a great new creative period in international law, and clear thinking, even on its scientific theory, is therefore particularly necessary. It may conduce to clarity if an attempt is made to define exactly what is meant by the doctrine of legal equality and to lay down the main propositions which will be put forward in this study.

The definition of what is meant by the doctrine of legal equality is vital, if any clear thinking on the subject is to be done. For authors on international law have, generally speaking, used the phrase with the greatest laxity. They have, indeed, troubled so little to inquire what they meant by it that almost all of them have fallen into an elementary confusion, which may fairly be held to vitiate the whole of their writings on the subject. This drastic conclusion, at which the present writer arrived after a careful examination of the works of almost every author from the Roman lawyers onwards, is confirmed by Professor Dickinson, of Michigan University, who has covered the same ground with great care.[1] Professor Dickinson asserts that it is " an almost universal error " among writers to confound " *legal equality* " with " equality *before the law* "; in other words, to confound equality of rights with equality of protection by the law for rights.

The error is a serious one. It is therefore worth while, even at the risk of appearing pedantic, to state what must be meant by anyone who holds that under international law all States are legally equal. Such an assertion necessarily involves two distinct propositions : first, that every rule of international law gives equal rights to every individual person to whom it applies—that every rule is, in other words, a general rule, and not one that provides particular solutions; and second, that every rule of that law applies to every person.

It is evident that the first of these two propositions is true, and must be admitted to be true by everyone who believes in a law of nations. To say that the rules of international law are general rules, and confer rights for which there is general protection for every " person " of international law to whom they

[1] In his work, *The Equality of States in International Law :* Harvard University Press, 1920.

apply, is no more than to say that they are law. A rule which provides a series of particular solutions for one given relation is not a rule of law within the ordinary acceptation of terms; in other words, if the subjects of a law are not equal before it, it is not law in the proper sense of the word.

But it does not follow from this that every rule of international law applies to every individual person, and that every individual person has therefore identically the same rights as every other individual person. In fact it may easily be shown, and it will be shown later on, that the individual persons of international law have often had different, and sometimes widely different, rights. The same thing is, of course, true of any national system of law. In English law everyone is equal before the law, but the second proposition does not therefore hold good. On the contrary, women, children, dukes, bachelors, doctors and idiots respectively have rights conferred upon them under English law, by rules which apply to them only, and create for them special privileges, duties or disabilities. Rules are no less general because they apply to a class only. But the fact that many rules apply to a class only does make strict legal equality an unrealised ideal. And legal equality, in the sense that every subject has the same identical rights as every other subject, is such an unrealised ideal in international law, and an ideal as little related to fact as it has always been in every other system of human law. Indeed, in international law it is doubtful whether it is even an ideal.

It may be permissible once more to urge that it is really important to keep clearly in mind the definition of legal equality given above, which is the only definition that will bear examination.

An attempt will now be made to state plainly and simply the main propositions which will be put forward in this study. They are as follows :

(*a*) The doctrine of the legal equality of every State in international law is a redundant theoretical abstraction.

(*b*) All the rights and rules which are usually classified by publicists under the title of equality cannot really be explained by the doctrine of equality as defined above; and therefore the conception of equality is not useful in the scientific system of international law either in the form of a fundamental right of a rule or of a principle from which rules can be deduced.

(*c*) These rights and rules, which have always been attributed

to the principle of equality, can only adequately be explained by the principle of independence; in other words, it is only in so far as they have been independent that States have been really equal; or, as Westlake expresses it, "the equality of sovereign states is merely their independence under a different name." [1] This is the central argument on which is based the view that is here put forward, and it is an argument which has the full support of Westlake's great authority.

(*d*) If there is no valid principle of equality in international law, there can be no analogical deductions from it, such as were made by Barbosa at The Hague in 1907.

(*e*) In particular, there can be no valid analogies drawn from the principle of equality in the rudimentary but important branch of international law which is beginning to develop around the international political institutions of the League of Nations. This new branch of international law, which it is perhaps not absurd to designate as "international constitutional law," is being built up by a series of new obligations, many of which in a greater or lesser degree narrow and restrict those typical rights of sovereign States which are properly classified under the heading of independence. It would, therefore, be peculiarly absurd to allow in such a branch of international law analogies from an alleged principle of equality which in fact is no more than a facet of the independence which this new branch of international law is restricting.

(*f*) Even if such analogies from the principle of equality were theoretically permissible they would be dangerous, undemocratic and retrogressive, for they would necessarily lead to such absurd results as that suggested by Barbosa at The Hague.

To sum up, the doctrine of equality has only served heretofore to divorce the theoretical system of international law as set forth in text-books from the facts of international life; but now, since the establishment of international political institutions, it has become a positive political danger.

It must be said at once that the above rather sweeping propositions constitute a direct attack on the views of almost every writer of authority on international law. There are indeed few topics on which writers have shown such unanimity of opinion; it is almost true to say that only Westlake and Lawrence differ

[1] Westlake: *International Law*, 1st. ed., Part I, Peace, p. 308. See also *Collected Papers*, p. 89.

from the views put forward by many generations of publicists of every nationality.

This is a matter of importance, for the opinions of the writers who during the last four centuries have created and developed the science of international law are of more than merely theoretical interest. It is one of the great functions of writers to help in determining the rules of international law, and to do so in a far greater degree than do writers on any other branch of jurisprudence. In Sir William Scott's words, a writer on international law must be consulted "not as a lawyer merely delivering an opinion, but as a witness asserting the fact." [1] Moreover, writers do more than merely act as witnesses; they do more than record what they believe to be the rules of international law. They also lay down the general principles which in their view underlie these rules, and they endeavour to do so in such a way as to make the application of such principles a matter of binding obligation. Therefore the principles which they enunciate are frequently accepted, as Hall says, "not merely as forms of classification of usage, but as distinct sources of law. States are consequently bound, in dealing with fresh circumstances, to apply them [those principles] whenever their application is possible." [2] It was to such a principle of so-called legal equality enunciated by almost every writer of importance that Barbosa so confidently appealed.

But in considering the value which must be attached to the opinions of writers on this subject it is not sufficient to record merely what they say. It is not sufficient to indulge, as even so distinguished an authority as Nys does in his consideration of it, in the mere counting of heads and unanalysed quotation. It is necessary not only to know what writers have expounded a doctrine of equality, but also to know the reasons which they have adduced in its defence.

If the history of the doctrine of equality is studied with this consideration in mind it will be found to be profoundly unsatisfactory. As has been already said, before the war the writer of the present article made an investigation of the opinions of international jurists on this subject from the Roman lawyers downwards, while a very valuable monograph on the same topic,

[1] Sir William Scott in *The Maria* (*English Prize Cases*, ed. by E. S. Roscoe, Vol. I. p. 159).

[2] Hall: *International Law*, 7th ed., p. 6.

dealing particularly with the history of the doctrine, has recently been published by Professor Dickinson.

There is no space here to deal at length with the results of these investigations or with the opinions of individual writers. Only a summary can be attempted. But it may be said at once that Professor Dickinson's historical survey entirely confirms the conclusions at which the writer of this article had previously and independently arrived. A brief account of these conclusions and of the origin of the doctrine of equality may perhaps be given.

It is commonly believed that the doctrine of equality is an essential part of the system of the founders of international law. It has been alleged that it was Grotius who was its original author. Lawrence even goes so far as to describe the process by which Grotius came to make it part of his system, and says that he was " under an intellectual necessity " to do so, since to him the *Jus Gentium* was in fact only another name for the *Jus Naturale*, and persons living under the law of nature were in a state of nature and therefore equal.[1] All this theory is a complete error both in fact and in reasoning. Grotius nowhere mentions the doctrine of equality. Indeed he never makes use of the word " equality," even in his remarks on the subject of Rank and Precedence, where it might perhaps have been expected that he would do so. He does not do so for the very reason that to him the *Jus Gentium* was not—as Sir Frederick Pollock has shown in his latest volume of essays [2]—the law which governs people in a state of nature; it was, on the contrary, a definitely customary law. It is, therefore, a complete mistake to claim the authority of Grotius for the doctrine of equality, though, by a false " Grotian tradition," this has been done by Lawrence and by many other authors as well.

It was, in fact, Puffendorf and the other leaders of the reaction to extreme naturalism who introduced the doctrine of equality into text-books on international law. And Puffendorf, whose whole system was based on his view that the law of nations was the law of persons in a state of nature, of course derived his new doctrine from this view. His argument was simply this: all persons in a state of nature are equal; the persons of international law are in a state of nature; therefore they are equal. Since to

[1] *Essays on Modern International Law*, 2nd ed., p. 202.

[2] *Essays in the Law*, Essay II, " The History of the Law of Nature."

Puffendorf the law of nature was merely that law which applied to persons in a state of nature—a perversion, it may be repeated, of the sound view that Grotius held on the point—it is natural enough that he should have had no doubts about the doctrine to which his argument led him. It may be noted in passing that Puffendorf defined exactly and satisfactorily what he meant by equality; so that he at least did not fall into the "almost universal" confusion mentioned above.

The fact that he based his doctrine on a sound definition makes it perhaps the more surprising that he did not observe that his theory, as will be shown in a moment, did not fit the facts of the world in which he lived. But it must be remembered that the whole movement of Puffendorf to naturalism was essentially retrogressive. There is, as Sir Frederick Pollock has argued in the essays mentioned above, no purpose to be served by exaggerating the conflict between naturalists and positivists. To a mediæval jurist and to a moderate naturalist such as Grotius the law of nature was merely another name for reason, which is common to every system of jurisprudence as a source of law. But Puffendorf was not a mediævalist nor a moderate naturalist. He excluded customary positive rules altogether from his system of international law. He based his whole doctrine on the state of nature, and thus did more than any other writer to divorce international law for two centuries from the facts of international life, and so both to deteriorate it as a science and to diminish indirectly and ultimately, if not in his own day, its practical authority. This being his main contribution to international law it is important from the present point of view that it was as part of his naturalistic and retrogressive system that the doctrine of equality was first introduced.

Puffendorf was followed by Thomasius, still more a naturalist, if that were possible, than Puffendorf himself. Thereafter the movement to naturalism was strong, indeed almost universal; and every writer who adopted his general system adopted also Puffendorf's doctrine of equality. Only Bynkershoek stood out against the movement. He was a true positivist who based his whole work on the customary rules of international practice. He did much to advance the cause of international law, but nowhere did he mention the word equality.

The doctrine was given a new form by Klüber. Wolff had previously invented the theory of so-called inherent rights; a

peculiarly useless method of jurisprudence, but one which was destined to play, and which indeed still plays, a great part in the science of international law. Klüber adopted Wolff's method and based his juristic system on the three fundamental inherent rights of self-preservation, independence and equality. In this form the doctrine of equality recurs repeatedly throughout the writings of publicists to the present day. It was, of course, given a positivist form by positivist writers. With some of them it appears still as an inherent right, with others as a convenient title for the classification of a number of specific rules, with others again, as has been said above, as a fundamental principle from which by analogy new results and rules may be deduced.

In point of fact, however, even till the end of the nineteenth century the writing on the subject was most unsatisfactory. No single publicist was able to collect together a serious body of rules to be classified under the heading of "Equality." Nor did any of them give an adequate defence of their use of it as a principle. In the eighteenth century almost every writer was content to quote, sometimes *verbatim*, what his predecessors had said. The favourite argument was that of the dwarf and the giant. The dwarf differs from the giant in size, but both are perfect in faculties; similarly, States vary in size but are identical in legal rights. Generally speaking, this parrot-like reproduction of thought and phraseology disappeared during the nineteenth century, but nothing very satisfactory took its place.

One or two examples will be given in a moment of the unsatisfactory nature of the arguments and conclusions of modern writers on this subject. In the meantime perhaps sufficient has been said to justify the assertion that both in its origin and in its subsequent treatment by writers on international law, the doctrine of equality is most unsatisfactory, and that the appeal to the authority of these writers is not by itself sufficient to support the view that equality is a fundamental principle of the system of international law. The doctrine must stand the test of reasoning, and must be shown by reasoning to be capable of justifying the results that have been deduced from it. It may be added that even if this could be done there would still be further difficulties to be overcome before Barbosa's interpretation and its logical consequences could be accepted.

In point of fact, however, the doctrine of equality has never been consistent with the facts of the international system to

which the rules of international law are supposed to apply. That is to say, there has never been any moment at which all the persons of international law have had identical rights under its rules. A few illustrations of the truth of this assertion may perhaps be given. The most striking and the most conclusive of them is perhaps furnished by what international lawyers have called "part-sovereign States," States, that is, which exercise some of the rights of sovereignty and which, in so far as they exercise these rights, are recognised to be persons in international law. A few years before Puffendorf first introduced the doctrine of equality more than three hundred part-sovereign States were recognised by the Peace of Westphalia. Neither he nor any other writer on international law would have denied to these three hundred States the title of being international persons; but neither he nor any other writer would have asserted that they were in fact equal in legal rights with fully sovereign States. No one would have made such an assertion, for the facts were too evidently against it. The most that could have been said was that in respect of such rights as they had under international law, these part-sovereign States were equal with fully sovereign States; in other words, that they were equal before the law—a very different proposition, as has been shown above, from saying that they were legally equal.[1]

There have always been, and there still are, part-sovereign States which for some other purpose are recognised as international persons. The recognition of such States is in itself sufficient to remove the basis of the doctrine of equality, as it has been put forward by most writers. There are, however, some other important illustrations of the truth that not all States have identical rights under international law. One of them is furnished by the system of capitulations; a system which was the sole condition on which Turkey and some other States were admitted into the comity of nations, and which became beyond dispute an essential part of the public law of Europe.[2] Another is furnished by the international treaties for the protection of racial, religious and linguistic minorities. These treaties were accepted by a great number of Central and Southern European

[1] Cf. in this connection Grotius' sound observations in *De Jure Belli et Pacis*, Bk. II, ch. xviii. 2.

[2] It is interesting to note that Rivier refers to the system of capitulations as an "undoubted inequality."

States during the nineteenth century, on the insistence of the Concert of Great Powers. They, too, came to be accepted as part of the public law of Europe, to such an extent that in 1919 they were imposed as of right on practically all States with mixed populations which took part in the Peace Conference. There can be no doubt that both the system of capitulations and these treaties for the protection of minorities restricted the independent sovereignty of the States which accepted them, and that therefore these States were *pro tanto* unequal in rights under international law with other States. There is no example of any such State appealing to a principle of equality in order to evade accepting these obligations; nor, had any State done so, would it have got a hearing.

In short, the facts of the international system to which the rules of international law applied did not at any time from the days of Grotius onwards justify the contention of writers who followed Puffendorf in asserting that every State which was a person of international law had under that law identical rights with every other State.

The illustrations which have been given indicate the solution of this curious muddle of abstract ideas. This solution is clearly what Westlake urged that it was, namely, that States under the old system of international law were only equal according to the degree to which they were fully sovereign; that the limitations on equality which have been indicated were merely restrictions of their independent sovereignty, resulting from the fact that sovereignty is partible, and that they had given up some of their sovereign rights.

To put the point into the words of Westlake, which have been already quoted, sovereignty is merely independence under a different name, and since, therefore, not all persons of international law are independent there can be no principle of equality. There follows a further conclusion which Westlake does not draw : that the true source or explanation of those rules or rights which have been commonly classified under the title, or attributed to the principle, of equality lies in reality in the principle of independence, which rests without dispute on one of the fundamental facts that underlie international law. At the best, therefore, the principle of equality is redundant and unnecessary; it will be seen later that it becomes, so to speak, actively fallacious when pressed to yield results which cannot be explained by independence.

This point requires further elucidation, and it may be worth while, therefore, to digress for a moment to explain what is meant by the principle of independence. In general, it is evidently not a very useful proceeding to analyse general principles, and to deduce from them the rules of international law. It is clearly better to work upon the basis of the rules and to deduce from them the principles that underlie them. In this case, however, it is clear that independence is one of the basic facts of the international system. There are, therefore, some important rules of international law which may accurately be said to result from independence, and which in every work on international law ought properly to be classified under that heading. Sir Frederick Pollock has made an analysis of independence and of its resultant rules, and he distinguishes three essential points in which the subjects of international law differ from the subjects of municipal law, as the result of the fact that they are independent. These three essential points are set out in the following rules :—

1. That States cannot be bound by any rule of international law to which they have not given either their specific or their tacit consent. In other words, that rules of international law binding on all States cannot be established by a majority vote of its subjects.

2. That States have the right to be the judge in their own case; that they are subject to no court or tribunal for the interpretation of the rights conferred upon them by international law.

3. That States have the right to take the law into their own hands to secure the execution of what they believe to be just; in other words, the right of war.

These are the three basic rules which, as Sir Frederick Pollock holds, constitute the positive rights of sovereign independence.

With this in mind let us now endeavour to analyse the arguments of a typical modern writer of authority who attributes definite results to the doctrine of equality. It will be useful for this purpose to take as an illustration the works of Professor Oppenheim, for the reason that his remarks on the subject are more than usually clear and specific. Professor Oppenheim attributes three rules to the principle of equality. He says :—

" Legal equality has three important consequences : The first that whenever a question arises which has to be settled by the consent of the members of the Family of Nations every State has a right to vote, and to one vote only. The second consequence is that legally—although not politically—the vote of the weakest and smallest State has quite as much weight as the vote of the largest and most powerful. Therefore, any alteration of an existing rule or creation of a new rule of international law by a law-making treaty has legal validity

for the signatory Powers and those only who later on accede expressly or submit to it tacitly through custom. The third consequence is that—according to the rule *par in parem non habet imperium*—no State can claim jurisdiction over another full-Sovereign State. Therefore, although foreign States can sue in foreign Courts, they cannot as a rule be sued there unless they voluntarily accept the jurisdiction of the Court concerned or have submitted themselves to such jurisdiction by suing in such foreign Court." [1]

It is clear that in writing the above Professor Oppenheim was endeavouring to explain the somewhat unreal procedure of "voting" adopted at the Hague Conferences in 1899 and 1907, and at the same time to attach some positive results to a principle consecrated by the authority of so many of his learned predecessors. But if Sir Frederick Pollock's analysis is borne in mind it becomes perfectly self-evident that the results which Professor Oppenheim attributed to equality ought in reality to be attributed to the principle of independence. Let us examine his three rules in turn. In so far as the first of them concerns matters about which States could, under the old system of international law, in any sense be said to vote, it was identical with his second rule, and the effect of both is in reality merely that no State can be bound to a new rule without its own consent. It is clear that this fact makes the effect of its vote exactly the same whether the votes of other States nominally count for one or for ten. It was indeed only by a very doubtful analogy of forms that the voting of States at the Hague Conference—to which, as has been said, Professor Oppenheim particularly referred—could be called voting at all. But so far as it could be called voting, the vote of every State had equal legal weight simply because no State could be bound against its will. But to connect the fact that no State could be bound against its will with the proposition that all States have equal rights is not logical nor even convenient. It is quite clear that States could have equal rights without the right of individual consent being included among them; and it is also quite clear that the right of individual consent, as Sir Frederick Pollock has shown, is one of the essential elements of the independence that belongs to States but not to their subjects. Professor Oppenheim's first two rules can, therefore, with more logic and convenience, to say the least of it, be attributed to the principle of independence rather than to that of equality.

His third rule, that no State has jurisdiction over another

[1] *International Law*, 2nd ed., Vol. I. pp. 168, 169.

State, has a no less doubtful claim to be connected with the proposition that all States have equal rights. In spite of the maxim of Roman law on which his deduction is based, it is clear that all States could have perfectly equal rights even if every State had the right of jurisdiction in its own courts over every other State. But this rule, which Oppenheim wrongly attributes to equality, is surely nothing else but the second element of independence which Sir Frederick Pollock distinguishes; the rule, namely, that every State has the right to be judge in its own case and is not subject to any external court or tribunal. There have, indeed, been disputed cases in which this rule of international law has been established, and in which it has been not to the equality but to the independence of States that the courts have appealed. One famous judgment may be referred to : the French case, *Affaire de la Maison Balguerie de Bordeaux contre le Gouvernement Espagnol*, 1828.[1]

There is no space to support through an analysis of the arguments of other writers the proposition that the rules which have been attributed to equality ought really to be attributed to some other principle, and that generally speaking the principle of independence is the proper heading under which they come. It may, however, be said, without fear of contradiction, that a similar analysis to that which has been made of Professor Oppenheim's conclusions could be made for the remarks of every other important writer, and with much the same result. The only possible conclusion is that he, and other writers like him, were dominated by the theories consecrated in the works of their distinguished predecessors, and that they were thus led to endeavour to make use of a redundant abstraction of no practical value. Westlake alone of those who wrote on the subject before the war had perceived this fact and the true explanation of the rules which had been connected with the redundant doctrine of equality.

It has been said above that the doctrine of equality has assumed a particular importance at the present time, not only because international law is at the beginning of a great new creative period, and it is therefore important to clarify in every way the scientific system by which it is usually expounded, but also because the creation of the international political institutions of the League of Nations has given birth to a new branch

[1] *Gazette des Tribunaux*, des 19 et 26 Avril, 1828.

of quasi-constitutional law in which the doctrine of equality, if it were allowed by false analogy to operate, would be of particular danger.

It has also been said that this doctrine had already become a danger before the war of 1914. Barbosa's successful argument of 1907 is a typical, indeed a classical, example of how dangerous it then was, and of how dangerous it might again be if an endeavour were made to apply it in the institutions of the League of Nations. It may be useful to say a few words more on its relation to the two principal constructive movements that were discernible in international law before 1914.

Both these movements were spasmodic efforts at organising an international system through the action of rudimentary international institutions. The first of them was distinctively legal in its purpose—the organisation of irregular (or even of regular) international conferences for the purpose of drawing up conventions embodying the rules of international law. The movement was one which before the war was developing with comparative rapidity. The two Hague Conferences were a conscious effort at systematising this conference method, which had previously given certain not despicable results. The second of these movements was distinctively political; it was a spasmodic but conscious, and to some extent organised, effort through the joint action of the Great Powers to maintain the peace and to stabilise and improve the international situation, more particularly in Africa and in South-Eastern Europe.

There is no need to say much of the first of these movements towards international organisation. The word organisation is, indeed, hardly properly applied in connection with the Hague Conferences. They represented a tendency from which perhaps in course of time organisation might have resulted. Their importance in connection with the doctrine of equality lay in the fact that they led to much writing of the sort quoted from Professor Oppenheim above, and in the Barbosa episode which has already been described. The so-called voting which took place at them had not, in fact, sufficient reality to be of practical importance to the present point; while the Barbosa episode served merely to indicate what were the dangers of legal theorising in practical affairs, and what in particular might be the danger of the principle of equality if in any efforts that were made to secure international organisation its application was attempted. If

those who agreed with Barbosa's theoretical view of the doctrine of equality were willing to insist on its application to the point of demanding equal representation for every State, great or small, in a court of international justice, there could be no limit to what they would demand, and the consequent danger to any future development of the movement towards international organisation is evident.

It may be added, however, that while it is an illustration of the danger of all legal theorising, and of the doctrine of equality in particular, the Barbosa episode has no further practical importance. It must be clear to anyone who has studied the debates that the whole of Barbosa's case rested entirely on the *dicta* of publicists. There was no practical argument that could be adduced in favour of his view. Nor was his view in any way accepted by the representatives of any of the Great Powers. Nothing that happened at The Hague, therefore, could be brought forward as a precedent for any future occasion.

Of the other movement towards international organisation a few words must also be said. For a century preceding the war of 1914 the Great Powers had at various times acted together to secure the settlement of international questions that were likely to disturb the peace of the world. They had acted consciously as a body, giving themselves, first the title of the Concert of Europe, and later, of the Concert of the Great Powers. Their action almost always took the form of definite interventions in the affairs of other States, frequently of the Turkish Empire and its smaller dependencies. These interventions were never objected to on principle, except by Greece in 1897, and then only in a very half-hearted manner. The solutions which they proposed were always accepted and were nearly always highly beneficial. The Concert was, in fact, what Lord Salisbury in 1897 claimed that it was—a rudimentary Council of the World. Had events in 1914 been different there is at least a fair case for holding that it might have developed into a more regularly constituted organism.

The point that is at present important, however, is this: that the interventions of the Concert were so frequently repeated and so often accepted by the rest of the members of the Comity of Nations, that they had begun to assume in the view of some good judges a definitely legal character, and if this legal character had been developed it would have created a clear example of

legal inequality in the only form of organised political action which the Society of Nations then knew. For it must be remembered that the interventions of the Concert were those of a quasi-legally constituted body which intervened by its own pretension, at least, as of right, which not only almost invariably received for its intervention and authority the *de facto* consent of other States, but which even from time to time was formally appealed to by them, and that its intervention had been exercised for a century. In view of this, Westlake [1] was surely right in claiming that the special position of the Great Powers was not only a contingent element in, but that it had become, or was at least becoming, before 1914, a definite part of the legal relations between States which it was the duty of the rules of international law to define.

Westlake's view on the above point may be open to objection; it was indeed strongly opposed by a number of writers. But the case for his view that the position of the Great Powers had at least begun to take on a legal character is strengthened by the events that have taken place since the League of Nations came into existence. When the Covenant came to be drawn up the primacy of the Great Powers was immediately admitted as one of the first principles upon which the political institutions of the League were to be founded. It is important to note that this primacy was admitted *as of right*, and that no Power, either while the Covenant was being drawn up, or since the League itself came into existence, has ever contested its validity. This is surely a strong argument in favour of the view that Westlake was right in holding that the Concert had established a legal presumption in favour of the joint political predominance of the Great Powers. Had it not been for the Concert and the precedence which it had established by its spasmodic exercise of authority during a century, the Great Powers would not thus have been accorded, without dispute or even discussion, the special position which is theirs within the framework of the League of Nations.

The recognition of their primacy, moreover, does quite clearly constitute a definite legal inequality within the institutions of the League between the Great Powers and the other States. There is no need to go into much detail concerning the legal rights which the Great Powers possess under the Covenant. They are,

[1] *International Law*, 2nd ed., Part I, Peace, p. 322.

of course, necessarily and rightly, all concerned with the working of the political institutions of the League. The chief among them, from which others follow, is that the Great Powers have permanent seats on the Council of the League. As the result of being thus permanently represented in the central organ of the League, they have a special power in questions concerning amendments to the Covenant, concerning political disputes between members of the League, and in elections such as those of the Secretary-General and of the judges who compose the Permanent Court of International Justice. Their rights in these matters do not consist merely in a special opportunity for the exercise of political power; they are definitely legal rights which must affect vitally the future constitutional and legal development of the League. They are, as will be argued later, a legal recognition of the necessity of the principle of inequality in the development of international political institutions.

It is not, however, a recognition which has been worked out in detail. Indeed, there are some provisions in the Covenant which do legally establish in certain spheres political equality between all the members of the League—for example, the provision that every member has one vote only in the Assembly—a provision of substantial importance, since some important decisions are now taken by a majority vote, and the voting is therefore a reality and not a sham. In fact the provisions of the Covenant have done no more than establish a very rough-and-ready compromise application of the principle of giving to the greater Powers greater legal rights in questions of political action than are given to smaller Powers. This simple working arrangement no doubt is wise. The proposals which have been made for giving weighted votes to the members of the Assembly, varying with the population of each State, and other similar suggestions that have been put forward, are, to say the least, premature. It would not be possible to secure acceptance for them, nor would it even be desirable at the present stage to do so. The working arrangement which has been established is satisfactory for present purposes. The statesmen who will have to control the institutions of the League in the future must be left to work out for themselves whatever elaborations may be needed.

For our present purpose the point that is important is that the principle of legal inequality in what we have called the new quasi-constitutional branch of international law has been definitely

established, and that it has been established as of right and without a protest being made by any single State. The argument which has been attempted in this study is intended to show that this recognition is not only wise and necessary from a political point of view, but that it is in accord, or at the least not in conflict, with the valid principles of the system of international law as it existed before the Great War began.

There are two further points which must be dealt with, one theoretical and the other practical. It was said above that it would be peculiarly absurd to allow rules to be established in the new quasi-constitutional branch of international law by analogy from the old doctrine of equality. The reason for this view has, it may be hoped, now been made clear, but, nevertheless, it deserves perhaps a little further explanation. It has been argued that the doctrine of equality was in part redundant and for the rest fallacious; that in so far as it was redundant it was because such legal equality as existed was merely a facet of the sovereign independence of the " persons " of international law, and that the results ordinarily attributed to equality ought properly to be attributed to independence itself. It was then shown that the typical and basic rights which resulted from the fundamental fact of independence were three : the right of a State not to be bound by any rule of law without its own consent; the right of a State to be judge in its own case, and the right of a State to take the law into its own hands. But all these three rights are, evidently, in a greater or less degree, curtailed by the movement towards international organisation which has culminated in the obligations of the Covenant and the creation of the political institutions of the League of Nations. The Covenant does not, indeed, modify the right of a State not to be bound by rules of law without its own individual consent, but it does seriously modify the rights of a State to be judge in its own case and to take the law into its own hands. Even the right of individual consent may in time be affected by the processes of quasi-legislation which the institutions of the League have begun to work out. This, again, is a matter on which it is impossible to predict the developments of the future. It is also unnecessary to attempt to do so. The main point is perfectly clear : that the movement towards an organised international political system necessarily means the restriction of the typical rights of independence which were the foundation of the old system of international law. This

being so it needs no argument to show that of all theoretical paradoxes the most absurd would be to allow the development of this movement and the organisation of the international institutions in which it is embodied to be affected by the analogical application of an alleged principle of equality, the sole validity of which lay in its connection with independence. This point, which, so far as legal theory is concerned, cannot be disputed, serves also to show the practical importance of finding in the principle of independence the true explanation of the rights that were formerly attributed to the principle of equality.

The remaining point to be dealt with concerns the justice and the necessity of recognising legal inequality in the new quasi-constitutional branch of international jurisprudence. The matter needs no elaborate argument. Barbosa's own proposal is sufficient to discredit the thesis he defended. A permanent international court consisting, as he suggested, of forty-five or fifty permanent judges would have been an absurdity. Not less so would be the Council of the League of Nations if it consisted of any ten States chosen by lot, and perhaps including the ten smallest in the world. Such a Council could wield no effective authority, for the simple reason that it would not represent the real political forces which control the world's affairs. The fundamental truth is that in all human affairs, including international affairs, the political arrangements to be made must be based on the human interests which are to be represented. To allow a State of one million inhabitants to hold the same constitutional position as a State of one hundred million inhabitants, is not only theoretically but practically indefensible. To have done so in the League would have been undemocratic in the true sense of the word; it would have led to the establishment of institutions that could not have exercised real influence or authority for the reason that they would not have represented the political interests and the political forces of the human race.

The compromise that has been adopted in the composition of the political institutions established by the League of Nations does represent those political interests and political forces with reasonable accuracy, and it is just for that reason that these institutions are rapidly establishing their authority and prestige. But it is necessary to add that while they are founded on an indisputable recognition of inequality, and while their working has provided a satisfactory practical solution of the intricate

problem of political representation, the doctrine of equality is not yet dead. There are still a number of writers, and probably also of politicians, who are prepared to argue that in the future development of the institutions of the League the old dogma of the writers must be respected. The purpose of this present study has been principally to endeavour to clarify current ideas on the subject, to show what seems to be the true line of defence against both the theory and the application of the doctrine of equality, and to indicate the true direction in which political and legal progress must be hoped for.

AIR BOMBARDMENT

By J. M. SPAIGHT, O.B.E., LL.D.

THE purpose of this paper is to set forth as briefly as possible the considerations which must be taken into account in framing any workable rule of air bombardment. For the views expressed in it the writer alone is responsible. Acquaintance with the existing state of international law in regard to naval and land bombardment is assumed. It may, however, be useful to draw attention to the stages by which international legislation upon the subject proceeded to the position existent in 1914. That position was the culmination of a series of stages which had begun forty years before.

I.—THE STAGES OF INTERNATIONAL LEGISLATION ON BOMBARDMENT.

The first stage is to be found in the rules proposed for land bombardment at the Brussels Conference in 1874. These rules laid down that only *fortified* towns could be besieged and that *open towns* which were *not defended* could neither be attacked nor bombarded.

The first Conference of The Hague, in 1899, taking up the unfinished work of Brussels, amended the rules to read that towns which were not defended could not be attacked nor bombarded. The restriction of legitimate attack to fortified or non-open towns was abandoned.

At the second Conference of The Hague, in 1907, the land war rule was merely extended to forbid the bombardment of non-defended towns "by any means whatever," the purpose of the extension being to make the rule applicable to bombardment from balloons as well as by artillery. In regard to naval bombardment, however, this Conference took an important step forward. It recognised the right of a naval commander to shell certain

defined parts of even an undefended port or town. These parts were :

> " Military works, military or naval establishments, depôts of arms and of material of war, workshops or plant fit to be used for the needs of the enemy fleet or army, and ships of war in the port."

As readers of this paper will be aware, the departure thus sanctioned from the land war rule exempting undefended towns from bombardment was due, as the report of the Committee which examined the question at The Hague expressly states, to special reasons which apply to naval bombardment and which, it may be added, equally apply in large measure to aerial bombardment. While in land war a belligerent will be in a position to take possession of an undefended place and then, without having recourse to bombardment, to carry out any destruction which would assist his operations, the commander of a naval force may be obliged under certain conditions, no other means being available, to use his guns to destroy enemy establishments serving military ends, when he has no landing party at his disposal, or is faced by the necessity for a rapid withdrawal.[1]

One can see, then, in the proposals of the Conferences of 1874, 1899 and 1907, three successive stages in the development of the law of bombardment, tending steadily in the direction of widening its scope. First, only the fortified and defended city can be attacked. Next, an unfortified city can be attacked if it is defended. Then, an unfortified and undefended city containing certain establishments can be attacked for the purpose of destroying these establishments. The development must now proceed to yet another stage, or rather the last stage must be completed by discarding finally the criterion of " defence " and substituting therefor the idea implied in the naval bombardment rule, namely, that of the " military objective."

II.—Inadequacy of the " Defence " Test.

The old broad rule that a defended city may, and that an undefended city may not, be bombarded, is no longer of any practical value. It has never been a satisfactory rule; it is more unsatisfactory than ever when applied to air bombardment.

[1] *Protocols of the Eleven Plenary Meetings of the Second Peace Conference held at The Hague in 1907*, p. 115 [Cmd. 4081] (1908).

At the best, as Professor Pillet states : [1] " undefended is an unfortunate expression, for one cannot know whether a town is defended until the moment when one decides to attack it." It will be still more difficult in future to tell whether a place is defended or not, for defence against air attack will tend to take the form of aerial counteraction rather than of artillery defence, and a squadron or flight of defending aircraft, perhaps based on some fairly distant aerodrome, may suddenly appear above a town which is entirely open so far as ground defence is concerned, and deny the raiding aircraft force access to that town, which cannot then truly be said to be undefended. For this and other reasons the criterion of " defence " as a test of the legitimacy of bombardment will have to be reconsidered, and liability to or immunity from attack made to depend upon some other consideration.

What, then, should be the test? Complete prohibition of air bombardment may be ruled out as an impossible ideal. Unrestricted freedom of air bombardment may similarly be set aside as repugnant to sentiments of humanity. A rule which is either unacceptable *ab initio* or bound to break down in practice is useless. One must take account of the practical limitations of the issue, and these impose upon one, in effect, a choice between two alternatives which are distinct in principle but may, to some degree, be combined in their application. These alternatives are represented broadly by the doctrines of air bombardment adopted by Great Britain, and less categorically by France, on the one side, and by Germany on the other, in the Great War.

III.—British, French and German Practice, 1914–18.

The British doctrine of air attack may be gathered from certain official pronouncements which were made during the war. The first was an Admiralty *communiqué* of February 16, 1915, relating to a Royal Naval Air Service air raid on Bruges and Ostend; in this it was stated :

" Instructions are always issued to confine the attacks to points of military importance, and every effort is made by the flying officers to avoid dropping bombs on any residential portion of the towns."

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[1] " La Guerre Actuelle et le Droit des Gens," in *La Revue Générale de Droit International Public* (1916), xxiii, p. 429.

Mr. Asquith stated in reply to a question by Mr. Jowett in the House of Commons on March 4, 1915 :

" Attacks [by our air, land or sea forces] are directed only against points of military significance, and every precaution is taken to avoid damage unnecessary to the object in view."

In each case attacks on German forces and military establishments in Belgium were referred to, but the same policy of confining bombardment to military objectives was affirmed at a later date by the Under Secretary of State for War (Mr. Macpherson) in regard to attacks upon German towns. Speaking in the House of Commons on March 19, 1918, he said :

" By attacking in daylight it has been possible to concentrate attack on objects of actual military importance—a striking contrast to the promiscuous methods adopted by the enemy."

In accordance with the principle thus laid down, the British reports of air raids upon German towns invariably specified the actual objectives of attack—railway stations, barracks, munition and chemical works, etc. Whether the town was technically an " open," *i. e.* an undefended one, was not stated, and was apparently regarded—and rightly so—as being for this purpose immaterial.

The French view was in agreement with the British, although in some cases the French official *communiqués* tended to confuse the question by speaking, incorrectly, of " reprisal " attacks by French airmen on German works and establishments which were perfectly legitimate objectives in any case.[1]

While German practice was, at the least, inconsistent and opportunist, the German doctrine at any rate appears to have been that " open " (*i. e.* undefended) towns not in the theatre of operations were immune from bombardment. When Karlsruhe was bombed by French airmen on June 15, 1915, the German official *communiqué* protested against the attack on an " open town, far from the theatre of operations and not in any way fortified." A similar protest was made against the subsequent bombing of Freiburg, Stuttgart and other towns in the interior of Germany. An official Berlin *communiqué* of July 21, 1916,

[1] L. Rolland : " Les Pratiques de la Guerre Aérienne," in *Revue Générale de Droit International Public*, 1916, xxiii, p. 543.

was more explicit. Complaining of French attacks on open German towns, it stated that :

"German air attacks until now have been exclusively directed against fortresses or works in places within field operations—namely, railway junctions, troop camps, or transport stations, which were immediately connected with the operations."

A French *communiqué* of June 28, 1916, had anticipated and disposed of the German contention that German air attacks had been in fact limited in the manner stated, but it is evident that the official eye of Germany was blind, whether deliberately or otherwise, to inconvenient facts. At any rate, as late as January 31, 1918, an official German report described the Gotha raid upon Paris of the preceding night as a reprisal for attacks on German "open towns outside the region of operations"; and in March, 1918, we find a more explicit statement of the German position in an interview with the general officer commanding the German air forces, published in the *Kölnische Zeitung* at that time.

"Hitherto," said the General, "our air attacks have been exclusively directed against such targets as were directly connected with military activities at the front. Moreover, we have repeatedly requested our enemies to indicate all cases where open towns outside the region of operations have been attacked by our bombing squadrons, but they have returned no answer."

Still later, at the end of May, 1918, we find the German Chancellor, Hertling, expressing readiness to consider any proposal from the Allies to put an end to "air attacks against towns outside the zone of operations"; and this offer was repeated in the Reichstag by General Wrisberg on June 8, 1918.

IV.—Restriction of Air Attack to Zones of Operations.

Germany could the more readily discount the military objections to her doctrine by reason of the exceedingly wide interpretation which she gave to the definition of a field, theatre or zone of operations. As Professor Rolland has pointed out,[1] the distinction which Germany sought to make between places in the theatre of operations and other localities was apparently one which had the effect of protecting Karlsruhe and Freiburg-im-Breisgau, but not, strangely, towns like London, Troyes,

[1] *Op. cit.*, p. 553.

and Nogent-sur-Seine. This fact is instructive in its bearing upon the proposal to restrict air operations in future wars strictly to places within such a zone. That the German authorities were themselves brought by the force of circumstances to incline in time to the other doctrine is evident from the care which they took to enumerate the military objectives of their raids upon London and other cities. Although they claimed (in an official memorandum issued at the end of March, 1915) that London was liable as a whole to bombardment on the ground that it was a "defended" city, the Berlin reports of the airship and Gotha raids upon London usually specified the military objectives (docks, wharves, munition works, railway stations) which the German airmen imagined that they had bombed.

The proposal that air bombing should be confined strictly to the zone of operations is one which has much to commend it. To quote Garner : [1]

> "It seems quite illogical to ban the submarine and leave the aviator free to launch his bombs upon private houses and upon unoffending peaceful non-combatants hundreds of miles behind the battle lines."

With the opinion here expressed all must agree, but one may be permitted to doubt whether the practical way to give effect to it is to prohibit completely all air bombardment outside zones of operations. If no air bombardment whatever were allowed outside such zones, soldiers and sailors would insist upon the delimitation of the zones in such a way as not to hamper their freedom of military action. Air attack being a valuable accessory of other operations, they would not be content to immobilise their air arm at possibly vital points which, especially in naval operations, it would not be possible to include in any definition of zones of operations so precise and rigid as to be of real value. The zones would have to be defined in so vague and indeterminate a manner that it would never be quite certain what places were included in them and what were not. The result would be disputes between the belligerents and a return before long to practically indiscriminate bombing.

Apart from this objection, the further difficulty would be encountered that merely to prohibit air attack upon "back areas" would by itself be insufficient. It would be necessary, as a corollary, to ban also aerial reconnaissance over them. No

[1] *International Law and the World War*, Vol. II. p. 461.

system of air defence, however strong, could guarantee that none of the scouting aircraft slipped through the cordon of defending aircraft. It is inconceivable that the belligerent whose military interests were thus endangered would allow these scouting machines to wander at will above his cities and inspect his military preparations, troop concentrations, etc. The hostile aircraft would certainly be repelled by fire from the ground; but if so fired upon, can they be reasonably denied the right to reply in kind?

It is true that the prohibition of air attack on rear areas might conceivably be restricted to defined centres of population in which belligerents would guarantee that no military establishments or munition works were situated, and it might be possible to arrange for some system of corroboration by neutral representatives of the belligerents' statement that the cities in question continued to be free from such establishments and works. Apart, however, from the intrinsic difficulties of such an arrangement, the effect of which would be practically to transform the centres of population concerned into neutral territory and, *inter alia*, to close them to the passage of the belligerents' troops, the result would be that the enemy, by a process of elimination, would be enabled to concentrate air attack upon the establishments and works located in cities not so protected, and the belligerent whose supply of personnel and material was thus endangered would eventually be forced, if he were to continue the war at all, to turn to the large centres of population—the protected places—to supply his needs. The guarantee would consequently break down.

The only course would be to forbid belligerent aircraft to fly for any purpose whatever over enemy territory outside the zone of operations. But such a rule would be unlikely in the extreme to survive the strain of actual war. The truth must be recognised that all restrictive rules of war have a breaking-point which is reached fairly early in all cases in which there are not absolutely overwhelming reasons making for the observance of the rule. The only rules which long survive that breaking strain are those the violation of which is felt to be also a violation of the great fundamental laws of justice and humanity. That could not be felt of a law forbidding aircraft to fly over enemy territory or one forbidding them to retaliate if fired upon in such territory, and it is as certain as any forecast of the kind can be

that a paper rule which sought to limit the action of aircraft in these ways would be an absolutely dead letter within a week or two of the outbreak of war.

The idea of a differentiation between operational zones and other places, impracticable as a solution of the problem if carried to the length of complete prohibition of air bombardment outside such zones, contains nevertheless a sound and useful principle which cannot be ignored. Combined with the doctrine of the military objective, it furnishes, within certain limitations, a practical rule for air bombardment. There is, in actual fact, a difference which all can appreciate between attack on places in a zone of active hostilities and attack on places far removed from the scene of fighting. No doubt it matters little to the non-combatant victim of an air raid whether he (or she) is struck down in the one area or in the other. But at least in the zone of operations violence reigns and is expected. People in that zone are or can be on their guard. They must be prepared to share in some degree the dangers to which the troops all around them are exposed. In rear areas, on the other hand, a sudden and unrestricted air attack appears, at any rate to our generation, as something like an outrage and a violation of the rights of non-combatants. That which can be condoned when it is a mere incident of battle or of the activities on the outskirts of battle takes on a very different aspect when it happens in a peaceful countryside. The sentiment of humanity, if not strict logic, calls for a differentiation between the zone of operations and territories in the rear.

V.—Operational Zones in Land War.

It is necessary, however, for the reasons already given, to define the zone of operations in a different manner from that which some writers propose, and, furthermore, to recognise that even outside such zone air bombardment cannot be entirely prohibited, though it may reasonably be subjected to a more restrictive rule. Some circumscribed and easily appreciable limits must be assigned to the term. If a vague or elastic significance is given to it, the resulting restrictive rule will be simply a standing invitation to disputes, recriminations and reprisals. Only in land operations is it possible to affix a sufficiently precise meaning to the term. Warships and aircraft carry, if one may

put it so, their own zones of operations with them; they create their battle zones as they go. Land fighting is less mobile and shifting; it is more localised geographically and the zone in which it can be regarded as existing is normally a fairly well-defined one. Not only the actual battle-ground, but the towns and villages behind the lines in which the troops concentrate for attack or return to refit or rest after an engagement may be taken as constituting as a whole the operational zone. That a zone of this kind can be defined in a practical way is shown by the fact that the British Government agreed, upon the request of the Vatican, to direct the cessation of air attack upon German cities " not in the vicinity of the battle front " on Corpus Christi Day, May 30, 1918. No such localised area of operations can be postulated in naval or air warfare.

Within these operational zones it is not unreasonable to allow to bombing aircraft a right of attack akin to that conceded by the law of war to artillery. The latter right is indeed in practice so unrestricted that one is inclined, in legislating for the new arm, to temper its rigour in some degree. In land (and indeed in naval) bombardments a commander may range his guns over the whole of a defended city, taking care only so far as possible to spare buildings devoted to religion, art, science or charity, historic monuments, and hospitals.

" Defended localities may be bombarded alike from sea and from land. And in such localities, on sea as on land, the bombardment may be brought to bear without discrimination on all their parts, even on those inhabited by the civil population." [1]

" No legal duty exists for the attacking forces to restrict bombardment to fortifications only. On the contrary, destruction of private and public buildings through bombardment has always been and is still considered lawful, as it is one of the means of impressing upon the authorities the advisability of surrender." [2]

VI.—Air Bombardment within Operational Zones.

In air bombardment one may reasonably demand, even in the operational zones, a discrimination which long custom has blurred in land (and naval) bombardments, but which reasons of humanity manifestly support. To scatter bombs broadcast over a city in which, though it is technically " defended " on

[1] P. Fauchille : " Le Bombardement Aérien " in *Revue Générale de Droit International Public* (1917), xxiv, p. 56.

[2] L. Oppenheim : *International Law*, 3rd ed., Vol. II. pp. 221–2.

its outskirts, there are but small detachments of troops, or even none, or military establishments or factories whose destruction can have but a trivial influence upon a campaign, is an offence against humanitarian sentiment. The military advantage, such as it is, that would be attained by an air attack in some cases of this kind could be purchased only at an appalling cost of civilian life. With the new arm *noblesse oblige*. The eagle has eyes to see. One can expect him to abstain from striking at objects not worthy of the swoop and fury of his attack.

One may demand, then, that in the zones of operations air attack shall only be employed against "agglomerations" (to use the useful French term for inhabited places) in which the military element is more important than the civilian. Outside such zones the rule of the military objective should be still more strictly interpreted. Only such an objective, that is, an object of military importance of the kind liable to naval bombardment under the Convention of 1907,[1] should ever be subject to bombardment. It is the "pound of flesh" which the air commander must take without drawing civilian blood. Unless he can segregate or pick out the military objective to be bombed he should abstain from attack. Troops on the march in open country, camps or barracks isolated from towns, and military establishments, strategic railways, munition factories, or depôts, which are so situated that they can be bombed without danger to non-combatants, are obviously legitimate targets. It is in regard to barracks, munition factories or railway centres situated in a densely populated city that the practical difficulty will arise. In many cases it will be impossible to attack such objectives without inflicting widespread damage upon civilians. To demand abstention from attack in such circumstances is to ask much of the air arm, but it is no more than is asked of naval commanders by the Washington Rules governing operations against sea-borne commerce.

There is, however, this important difference between air and naval attack, that the legitimacy of the former, in a much higher degree than that of the latter, must necessarily be a matter for the judgment of the individual officer immediately concerned. Air bombardment is subject to no such specific prohibition as that applying to submarine operations against merchant vessels, and provided a flying officer, in acting under the orders given

[1] See Pearce Higgins: *The Hague Peace Conferences*, p. 355.

to him, uses reasonable discretion and executes them in a manner not clearly wanton nor callously inhumane, an error of judgment on his part cannot be treated as a " war crime."

VII.—Some Results of the Proposed Rules.

Two practical results of the joint application of the rule of the military objective and of the discrimination between operational zones and other localities must be noticed. The first is that, while " defence " will disappear as a ground for general bombardment of the defended city or town, it will remain nevertheless a constituent (as it were) of liability, for attack from the ground upon aircraft, or the preparation of such means of attack, will establish the presence in that place of a military objective, viz. the anti-aircraft force or gun. This objective is a legitimate target. The second is that, since the operational zone which is contrasted with other localities is a zone of land operations, a port or coastal town, even one which is being actually bombarded by a naval force, is not within the operational zone here signified unless it happens at the same time to be in the immediate neighbourhood of land operations. If it is not, any aircraft co-operating with the warships will be bound to confine their bombs to those military objectives which can be so destroyed without the indiscriminate destruction of civilian life and property. On the other hand, so long as the rules of naval bombardment remain as at present, the ships' guns can range at large over the defended port or town and need not restrict their fire to military objectives; and, while the aircraft must not themselves drop bombs in this broadcast fashion, there is nothing to prevent them from directing, by " spotting," the fire of the warships over parts of the port or town which are not military objectives. This inconsistency can only be remedied by a revision on more logical and humane lines of the law of naval—and, it may be added, of land—bombardment as it exists to-day.

VIII.—The Case of Munition Workers.

In what is here said with reference to the sparing of civilian life it is important to take account of one special category of

civilians. These are the workers, men and women, in munition factories. As Professor Rolland has observed,[1] they—

"occupy a position intermediate between the combatants properly so called and the non-combatants who continue to follow their peace-time pursuits and professions. The reasons for giving them a privileged position in regard to hostile action are losing much of their force. Fundamentally these people are almost exactly in the same situation as men engaged in the auxiliary services of the armies. Now the latter are certainly exposed to violent measures."

This statement by Professor Rolland has been criticised by Messrs. Mérignhac et Lémonon [2] as failing to make the necessary distinction between munition workers actually employed upon such work and the same persons when in their own homes. In the latter case they are in no way different from the ordinary population. It is only when actually at work in the munition factories that they can be regarded as holding a special position. When so employed they cannot be considered to be entitled to the immunity which otherwise they can claim.

IX.—Imperfections in the Solution Outlined.

It cannot be pretended that a régime of air bombardment based on the principles outlined above will be in all respects satisfactory. The subject bristles with difficulties. The delicate equipoise between military and humanitarian interests is all but beyond human achievement. It is, however, an advance, and a notable one, to establish the principle that attack should be limited to actual military objectives and to abandon once and for all the outworn rule that the presence of outlying defences justifies the indiscriminate bombardment of the city or town behind them. It is in the loyal observance by belligerent Governments and aircraft commanders of the rule of the military objective that hope for the future lies. In air warfare more than in its elder brethren of the land and the sea, the heart and conscience of the combatants are the guarantee of fair fighting, not any rule formulated in a treaty or a manual. Given a principle to be followed and given also the due recognition in that principle of military exigencies, the fighting men must be trusted to apply it with chivalry and humanity. Any failure upon their part to do so will react inevitably upon the people of

[1] *Op. cit.*, p. 554.
[2] *Le Droit des Gens et la Guerre de 1914–18*, Vol. I. pp. 646–7.

their own country, for reprisals are certain to follow breaches of the rules laid down. There is here an additional motive for strict compliance with the bond.

It is mainly because of the very nature of air warfare and because the whole civilian world has a common interest in the restriction of air attacks that one is entitled to discount certain obvious imperfections in the solution outlined. It is true that its success will depend almost entirely on the exercise of sound judgment and discretion by aircraft commanders. It is they who will have to decide, often on incomplete data and under difficult conditions—fired upon, possibly, by anti-aircraft guns from below and by hostile aircraft from above—whether any given establishment is in fact a "military objective"; whether, outside an area of operations, it can be bombed without inflicting widespread injury upon non-combatants; whether, within an area of operations, the military concentration is such as to justify the treatment of a town or village as a *place d'armes;* whether, finally, any given place is or is not within an operational zone. This last question is neither so important nor so indeterminate as it would become if complete prohibition of bombardment outside the operational zone, and not merely the requirement of greater discrimination in attacking military objectives outside that zone, were in question, or if the zone were less narrowly defined than is here proposed. There will, however, be occasions in which doubt may arise; the border-line case will always be a difficulty. On all the points referred to there is clearly room both for deliberate abuse of the rule and for human error in the honest application of it. Probably no rule could be devised of which the same might not be said. At least, a rule which was so simple and categorical as to be completely satisfactory to the jurist would almost certainly not commend itself to the air commander, nor again would a rule which gave complete satisfaction to the latter prove at all acceptable to the jurist.

WHOSE IS THE BED OF THE SEA?

SEDENTARY FISHERIES OUTSIDE THE THREE-MILE LIMIT

By Sir CECIL J. B. HURST, K.C.B., K.C.

On August 2, 1858, the Royal Assent was given to an Act called the Cornwall Submarine Mines Act, which declared in Section 2 that minerals won from mines and workings below low-water mark under the open sea adjacent to but not being part of the County of Cornwall were vested in the Queen in right of Her Crown " as part of the soil and territorial possessions of the Crown." Parliament by this legislation has committed itself to the proposition that the bed of the sea below low-water mark is vested in the Crown.

As the rights of the Crown were fixed—at any rate in this country—long before the existing rules of international law on questions like the three-mile limit were developed, it will be useful to consider such precedents and authority as exist in order to see what bearing they have on questions intimately connected with the bed of the sea, such as pearl or chank fisheries, submarine cables and tunnels.

The story of the origin of the Cornwall Submarine Mines Act is told with some detail in the judgments of Lords Coleridge C.J. and Cockburn C.J., in *R.* v. *Keyn*.[1] A dispute had broken out between the Crown and the Duchy of Cornwall as to the ownership of minerals won from workings lying beneath the water on the coast of Cornwall. The dispute covered minerals obtained from workings (*a*) between high- and low-water mark, (*b*) below low-water mark in tidal rivers and estuaries, and (*c*) below low-water mark in the open sea. Lord Cranworth, then Lord Chancellor, and Lord Kingsdown, then Chancellor of the Duchy, agreed to refer the question to the arbitration of Sir John Patteson, one of the judges of the Court of Queen's Bench, and Sir John Patteson decided that the right to all

[1] L.R. 2 Exch. Div. at pp. 155–157 and 199–201.

mines and minerals lying under the seashore between high- and low-water mark and under estuaries and tidal rivers below low-water mark in the County of Cornwall was vested in the Prince of Wales "as part of the soil and territorial possessions of the Duchy of Cornwall," and that the right to all mines and minerals lying below low-water mark under the open sea adjacent to the County of Cornwall but not forming part of it was vested in Her Majesty the Queen "in right of Her Crown." Sir John Patteson also recommended that effect should be given to his award by legislation, and accordingly the Bill was introduced which in due course became law as the Cornwall Submarine Mines Act, 1858.

It will be noticed that the arbitrator's award gives no reason for deciding that the minerals obtained from workings below low-water mark belong to the Crown: the award merely says that they were vested in Her Majesty in right of Her Crown. When the Bill was prepared the draftsman added the words which figure in Section 2, that these minerals were vested in Her Majesty in right of Her Crown "as part of the soil and territorial possessions of the Crown," thus putting the Queen's title to these minerals on the same footing as the title to those obtained from workings above low-water mark, which were declared both by the award and by the Bill to be vested in the Prince of Wales "as part of the soil and territorial possessions of the Duchy of Cornwall."

No papers which have been published throw any light on the question of how these words came to be inserted in the text of the Bill, and at first sight one would be inclined to hazard the surmise that they were added merely by inadvertence. It is more likely, however, that the draftsman considered that they represented a necessary element in Sir John Patteson's award.

Lord Coleridge and Lord Chief Justice Cockburn were on opposite sides in *R.* v. *Keyn*, and the former was laying stress on this enactment of 1858 to substantiate his argument that the Crown possessed a territorial jurisdiction within the three-mile limit below low-water mark. He had been given copies by the Lord Warden of the Stannaries of all the proceedings in this arbitration and of the written statements put forward on either side. He states in his judgment that the argument on the part of the Crown was founded on the proposition that the "fundus maris" below low-water mark belonged in property

to the Crown, whereas it was argued on behalf of the Duchy that the bed of the sea did not belong to the Crown, and that the Prince, as first occupier, was entitled to the mines thereunder.

If in face of these two respective contentions Sir John Patteson decided that minerals won from workings below low-water mark belonged to the Crown, it is difficult to reconcile his award with anything but an intention to maintain that the right of the Crown to these minerals was a territorial right, *i. e.* that the property in the bed of the sea and not merely sovereignty and jurisdiction over it was vested in the Crown. The recitals of the Act also show that he had himself suggested that the Bill should make provision for giving to persons working these minerals below low-water mark in right of leases, etc., from the Crown, facilities to extract them upon terms to be agreed between the Crown and the Duchy. Such a recommendation is inconsistent with any view that the right to minerals won from below low-water mark is based on seizure or occupation of a " res nullius."

Assuming that the right of the Crown in the soil of the bed of the sea below low-water mark is a territorial right, *i. e.* that the ownership of the soil, as apart from the mere right of jurisdiction, is vested in the King, the question of interest is, how far do these property rights extend, and what relation do they bear to the three-mile limit of the marginal belt of territorial waters?

The rights and prerogatives of the Crown date from the earliest periods of the national history. The three-mile limit as the measure of the marginal jurisdiction of the Crown is of quite modern growth. It has developed out of Bynkershoek's rule that *terræ potestas finitur ubi finitur armorum vis*, and Bynkershoek's *De Dominio Maris*, in which the rule was enunciated, was only published in 1702.

Most of the cases to be found in the reports which throw light on the question whether the property in the soil of the bed of the sea is vested in the Crown are fishery cases, or are concerned with the question of the right of a subject by prescription or by presumption of a lost grant to establish as against the public at large a right which could not be good unless derived from the Crown. An exclusive right on the part of a private person to the fishing in any area below low-water mark would constitute a " several fishery," and the right of the Crown to make a grant

of a several fishery disappeared with Magna Charta. As it is admitted in these cases that the rights claimed must have been derived from the Crown, it follows that the rights of the Crown in the bed of the sea must have been fixed at least as early as the thirteenth century.

It was considerations of this character which led Lord Haldane L.C., in delivering the judgment of the Judicial Committee of the Privy Council in *Attorney-General of British Columbia* v. *Attorney-General of Canada*[1] in 1913 to decline to commit the Privy Council to any definite view on the question whether the Crown was the owner of the "solum" of the bed of the sea adjacent to the shore below low-water mark. On the whole, however, the weight of authority even at that time, and particularly the provisions of the Act of Parliament mentioned at the beginning of this article, seem to establish the proposition that within the three-mile limit at least, the bed of the sea below low-water mark is vested in the Crown.[2]

Since the date at which Lord Haldane expressed these doubts there has been a decision of the Judicial Committee of the Privy Council which definitely lays down the rule that the Crown is

[1] 1914 Appeal Cases, 153, particularly pages 168 and 174.

[2] See *dicta* of the judges in *Free Fishers of Whitstable* v. *Gann*. Erle C.J. in 11 C.B. N.S. 387, Lord Wensleydale in 11 H.L.C. at p. 210, Lord Chelmsford, *ibid.*, at p. 217.

The Whitstable Fishery case arose out of a claim by the Free Fishers of Whitstable to charge an anchorage toll of 1*s.* on vessels anchoring within the limit of their fishery. The toll was upheld in the Court of Common Pleas and the Exchequer Chamber on the ground that the company were entitled to charge for the use of their property (the soil into which the anchor was inserted), and disallowed by the House of Lords on the ground that anchoring was an incident of navigation and nothing short of legislation could override the paramount right of the public to navigate the sea. In later litigation (*Foreman* v. *Free Fishers of Whitstable*, L.R. 4 H.L. 266) the charge of the toll was upheld by the House of Lords on the ground that the *locus in quo* constituted part of a port.

Dictum of Baron Alderson in *Attorney-General* v. *Chambers*, 4 De G.M. & G. 206.

Dictum of Lord Watson in *Lord Advocate* v. *Wemyss*, 1900, A.C. 48 at p. 66.

Dictum of Parker J. in *Lord Fitzhardinge* v. *Purcell*, 1908, 2 Ch. 139 at p. 166.

Dicta of Lord Kyllachy and Lord Young in *Lord Advocate* v. *Clyde Navigation Trustees* (1891), 19 Rettie, 174.

Further confirmation of this view may be found in the terms of various local Acts of Parliament which are passed from time to time for the purpose of enabling lands below low-water mark to be reclaimed, *e.g.* Norfolk Estuary Act, 9 & 10 Vic. cap. CCCLXXXVIII., or Lincolnshire Estuary Act, 14 & 15 Vic. cap. CXXXVI. The preamble to such an Act usually recites the claim of the Crown to the land, and the operative sections of the Act contain a provision awarding compensation to the Crown for giving up the land, to be vested in those who pay for the reclamation.

Westlake, *International Law* (1910), Part I. p. 188 : "Within that extent the water and its bed are territorial and the wealth of both is the property of the territorial Sovereign."

the owner of the bed of the sea. Islands had arisen within the three-mile limit at the mouth of a tidal navigable river in India, and the question was whether these islands belonged to the Crown or whether they could be claimed by the landlords of the neighbouring estates on the coast in virtue of possession taken by squatters claiming under them, such occupation, however, not being of sufficient duration to give a good title by prescription. The Privy Council held that the islands were the property of the Crown. Lord Shaw in delivering the judgment reviewed the cases dealing with the rights of the Crown in the bed of the sea and quoted approvingly the *dictum* of Parker J. in *Lord Fitzhardinge* v. *Purcell* referred to in the footnote on p. 37. Its terms were as follows—

" The effect of the two cases [1] I have cited is that, subject to the public rights in connection with fishing and navigation, the Crown's ownership of the foreshore is a beneficial ownership. Clearly the bed of the sea, at any rate for some distance below low-water mark, and the beds of tidal navigable rivers, are *prima facie* vested in the Crown, and there seems no good reason why the ownership thereof by the Crown should not also, subject to the rights of the public, be a beneficial ownership." [2]

Lord Shaw also referred to the Duchy of Cornwall dispute referred to at the beginning of this article and then quoted the following passage from the judgment of Lord Watson in *Lord Advocate* v. *Wemyss* :—

" I see no reason to doubt that by the law of Scotland the *solum* underlying the waters of the ocean, whether within the narrow seas or from the coast outward to the three-mile limit, and also the minerals beneath it are vested in the Crown." [3]

Lord Shaw added that the law there enunciated was also the law of India, and continued—

" The Crown is the owner, and the owner in property of islands arising in the sea within the territorial limits of the Indian Empire. It should be added with reference to the suggestion that the territory of the Crown ceases at low-water mark and that the right over what extends seawards beyond is merely of the nature of jurisdiction or the like, that there are manifest difficulties in seeing what are the grounds for this principle. There is nothing to recommend a local jurisdiction over a space of water lying above a ' res nullius.' As to practical results; the confusion that might be produced by leaving islands emergent within the three-mile limit to be seized by the first comer is obvious." [4]

[1] *Blundell* v. *Catterall*, 5 B. and Al. 268, 301; and *Brinckman* v. *Matley* [1904], 2 Ch. 313.

[2] L.R. 1908; 2 Ch. 139 at p. 166. [3] L.R. 1900, A.C. 48 at p. 66.

[4] *Secretary of State for India* v. *Chellikani Rama Rao*, 39 Indian Reports, Madras Series, 1916, p. 617.

The question however remains, to what distance do these property rights of the Sovereign in the bed of the sea extend? So far as the law of this country is concerned, the rights of the Crown were fixed long before the doctrine of the three-mile limit was thought of, and yet it seems to be agreed that nowadays these property rights do not in general extend beyond the three-mile limit.

Plowden might argue in 1577—

"that the interest of the Queen in the sea extends into the midst of the sea between England and Spain; but the Queen hath the whole jurisdiction of the sea between England and France because she is Queen of England, France, etc. And so it is of Ireland." [1]

To-day such claims would be excessive.

Lord Hale's writings give no indication as to the distance to which he considered the property of the Crown in the bed of the sea to extend—

"The king hath the propriety as well as the jurisdiction of the narrow seas, for he is in a capacity of acquiring the narrow and adjacent sea to his dominion by a kind of possession which is not compatible to a subject; and accordingly, regularly, the king hath that propriety in the sea; but a subject hath not, nor indeed cannot have that propriety in the sea, through a whole tract of it that the king hath; because, without a regular power he cannot possibly possess it. But though a subject cannot acquire the interest of the narrow seas, yet he may by usage and prescription acquire an interest in so much of the sea as he may reasonably possess, viz., of a *districtus maris*, a place in the sea between such points, or a particular part contiguous to the shore, or of a port, creek, or arm of the sea. These may be possessed by a subject, and prescribed in point of interest both of the water, and of the soil itself covered with the water, in such a precinct, for these are maniorable (*sic*), and may be entirely possessed by a subject." [2]

The wide claims to jurisdiction over the narrow seas which this country made in the past have fallen into desuetude. There has been no formal renunciation of them and it is merely by disuse that they have lapsed. If the rights of the Crown to the ownership of the bed of the sea are now more restricted than they were at the time at which Lord Hale was writing, it can only be that they also have been narrowed by disuse.

The principle enunciated by Hall is that the true key to the development of the law is to be sought in the principle that maritime occupation must be effective in order to be valid. If

[1] *Queen* v. *Sir John Constable*, 3 Leonard 73.
[2] Hale: *De Jur. Mar.* c. 6, p. 31.

it is disuse and disuse alone which has led to a restriction of the rights of the Sovereign in the bed of the sea, it follows that in cases where there has been effective occupation of a portion of the bed of the sea within the meaning of the principle enunciated by Hall, and such occupation still continues, there has been no abandoning of the rights of ownership, and consequently the ownership still continues. Assuming that this proposition is sound, it removes a difficulty which has found expression in writings on international law as regards sedentary fisheries occurring outside the three-mile limit. Vattel's statement: " Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property? " ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles if it is realised that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters. Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and the exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circumstances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit.

The instances where ancient usage justifies a claim to sedentary fisheries outside the three-mile limit do not seem to be numerous, and of those which are known some appear to be situated in bays or gulfs which are claimed as part of the national territory by the State contiguous to whose shore they lie. For instance, the chank fisheries and the pearl fisheries in the Gulf of Manaar have been the subject of regulation by local ordinances, etc., throughout the nineteenth century. The pearl and chank fisheries in the Gulf of Manaar were claimed from early times by

the successive Portuguese, Dutch and British masters of the neighbouring territory, and there can be little doubt but that a good title to the ownership of these beds can be made out, based on long-continued occupation. Both the Gulf of Manaar and Palk's Bay, the two great bays which divide India from Ceylon and are separated from each other by the long stretch of islets known as Adam's Bridge, would probably be claimed as part of the national territory, and not part of the high seas at all. Palk's Bay at any rate has now been held by the Madras Courts [1] to be an integral portion of the British Dominions, and if the question arose a similar decision might possibly be given as to the Gulf of Manaar. Even if it were not, however, the claim to the ownership of the pearl and chank beds in that gulf could be based on long usage and uncontested enjoyment; and the right to legislate with regard to these beds could be rested on the ground of their ownership.

Another instance which can be cited, and one where there is no doubt that the site forms part of the high seas, is that of the oyster beds off the east coast of Ireland. By the Sea Fisheries Act of 1868 [2] power was taken to issue an Order in Council enabling the Irish Commissioners to regulate the dredging for oysters on any oyster beds within a distance of twenty miles seawards from a straight line between Lambay Island and Carnsore Point. Some of these banks were between ten and twenty miles beyond the three-mile limit.

The above are instances where the State interested formed part of the British Empire. The same principle must of necessity apply also to sedentary fisheries on banks claimed by foreign Governments. The Bey of Tunis has, for instance, claimed the exclusive right to the sponges on a bank outside the three-mile limit off the coast of Tunis by the continuous and unquestioned enjoyment of the *fructus* of these banks. Such enjoyment would constitute a title to the bank which foreign States would no doubt recognise and would oblige their nationals to recognise. Similarly, Mexico is said to have legislated for regulating pearl fisheries off the Mexican coast though outside the three-mile limit.

The maintenance of a State's property rights in special areas outside the three-mile limit when more extensive general claims

[1] *Annakumaru Pillai* v. *Muthupayal*, 1903, 27 Indian Reports, Madras Series, 551.
[2] 31 & 32 Vic. c. 45, sec. 67.

to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim,[1] that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the sub-soil beneath the bed of the territorial maritime belt. Tunnelling in the sub-soil for purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea.

The International Convention for the Protection of Submarine Cables (Paris, March 14, 1884) does not run counter to this theory of the bed of the sea being a no man's land in which property can be and is acquired by occupation. The effect of the convention is to place submarine cables under a kind of common protection, as all the parties to the convention accept the view that wilful injury to a cable outside territorial waters is an offence to be punished in the courts of the country of the vessel doing the damage. There is nothing exclusive in character about the occupation of the sea bed occasioned by the laying of a submarine cable. The mere fact that one cable is there already does not prevent another from being laid across it; hence there is no need for the application of the principle that sovereignty and property of the sea bed are acquired by the occupation which the first comer achieves by the laying of his cable. There is no call for the recognition of exclusive rights. All that is necessary for safeguarding the position of the cable owner and for the maintenance and encouragement of cable communications is some method of protection of the cable by the recognition of its right to be there and by ensuring the punishment of those who injure it. It is not so with a submarine tunnel or with a mine driven out into the sub-soil beneath the high seas. Unless the rights created by such operations were exclusive the works would be valueless, for at any moment they would stand the risk of destruction through contact with similar works carried out by some other party.

It cannot be too strongly emphasised that the recognition

[1] *International Law*, 3rd ed., Vol. I. pp. 451–455.

of special property rights in particular areas of the bed of the sea outside the marginal belt for the purpose of sedentary fisheries does not conflict in any way with the common enjoyment by all mankind of the right of navigation of the waters lying over those beds or banks. Nor does it entail the recognition of any special or exclusive right to the capture of swimming fish over or around these beds or banks.

To sum up: so far as Great Britain at any rate is concerned, the ownership of the bed of the sea within the three-mile limit is the survival of more extensive claims to the ownership of and sovereignty over the bed of the sea. The claims have become restricted by the silent abandonment of the more extended claims. Consequently, where effective occupation has been long maintained of portions of the bed of the sea outside the three-mile limit, those claims are valid and subsisting claims, entitled to recognition by other States.

The claim to the exclusive ownership of a portion of the bed of the sea and to the wealth which it produces in the form of pearl oysters, chanks, coral, sponges or other *fructus* of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.

THE NATIONAL CHARACTER AND STATUS OF CORPORATIONS

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THE time has now arrived when it is perhaps worth while attempting an estimate of the controversy upon this subject which has continued since the outbreak of the recent war, and of the modifications in the *ante bellum* position which appear to have been established as the result. That the controversy should have arisen is not surprising, for the reason stated by Lord Parker in 1916 :

> " Joint-stock enterprise and English legislation and decisions about it have developed mainly since this country was last engaged in a great European war and have taken little, if any, account of warlike conditions." [1]

This is essentially one of those parts of public international law which can only be handled with safety by considering in the first instance the relevant municipal law; and the most useful contribution to the subject that can be made is for each writer to state the law of his own country. Then, and only then, can one proceed to the further questions, whether there is any *communis opinio* among a sufficiently numerous and important body of States to enable one to formulate any rules as recognised by public international law, and, if not, whether it is possible and desirable to achieve any such recognition by international convention. Accordingly we shall devote ourselves to an examination of the English municipal law, adding a few very brief notes upon the law of the United States and of France.

The order of our treatment will be as follows :

I. The *ante bellum* position in England.
II. The *Daimler Case.*
III. Summary of principal other English decisions.
IV. Observations on the *Daimler* doctrine.

[1] *Continental Tyre and Rubber Co.* v. *Daimler Co.* [1916], 2 A.C. at p. 344.

V. Summary of present English law.
VI. Appendices. A. As regards the ownership of British ships.
B. Under the Treaty of Versailles.
C. In the United States of America.
D. In France.
E. Some Recent Publications.

I.—The Ante Bellum Position in England.

Before the recent war the fundamental axiom governing the status of a corporation in England was, in the words of a very distinguished judge and author, now Lord Wrenbury :

" The legal entity created by registration is a corporate body distinct from the persons composing it." [1]

The statement, though made with regard to only one kind (but that the most numerous kind) of corporation, is none the less true *mutatis mutandis* of corporations aggregate in general. For binding authority for this statement there is no need to go beyond the famous " one man company " case, *Salomon* v. *Salomon & Co.* : [2]

" The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them." [3]

In course of time this doctrine had to stand the strain of a war, but only a mild strain and in only a small war. In the *Janson Case* [4] the plaintiff company was registered, and carrying on business, in the territory of the Transvaal Republic, but had a London office and a London committee of management, and its shareholders were almost entirely resident in Europe and were mainly British subjects. It sued a Lloyd's underwriter upon a policy of insurance, and the defendant underwriter had, somewhat strangely,[5] been allowed to waive the plea that the cause of action (which accrued before the outbreak of war) was suspended until after the restoration of peace. It was, however, contended

[1] Buckley : *The Law and Practice under the Companies Consolidation Act*, 9th ed., p. 27.
[2] [1897], A.C. 22.
[3] Per Lord Macnaghten at p. 51.
[4] *Janson* v. *Driefontein Consolidated Mines* [1902], A.C. 484.
[5] See Lord Davey's remarks at p. 499.

by the defendant that the plaintiff company was an alien enemy at the time when a consignment of bullion belonging to it and insured under the policy against capture was " commandeered " by the Transvaal Government to help it in waging war, and that therefore a British underwriter need not—nay, legally could not—make an indemnity against such loss. The House of Lords held that the fact that the seizure of the bullion took place before, though in contemplation of, the outbreak of war entitled the plaintiff company to recover upon the policy after the restoration of peace, and so their lordships' remarks upon the status of the plaintiff company were *obiter dicta*. The war was over by the time the case reached the House of Lords.

Salomon's Case was not cited, but Lord Macnaghten adopted the same view of a corporation as he expressed in that case :

" I assume that the corporation . . . was to all intents and purposes in the position of a natural-born subject of the late South African republic. . . . If all its members had been subjects of the British Crown, the corporation itself would have been none the less a foreign corporation and none the less in regard to this country an alien." [1]

And Lord Brampton said :

" The company clearly must be treated as a subject of the Republic, notwithstanding the nationality of the shareholders." [2]

Meanwhile the nature of the relationship of corporators to the corporation was being considered from a different angle, namely, for the purpose of assessment to income tax, and the same view was being adopted. English companies having as shareholders a preponderating or complete control over the operations of foreign companies were held not to be assessable for income tax upon the profits made by the foreign companies.

In a case [3] occurring in 1908 Fletcher Moulton L.J. (as he then was) said : [4]

" Treating it as an abstract proposition of law, I am of opinion that the acquisition of the whole of the shares of a corporation by one individual does not of itself alter the nature of the relationship to the corporation." And later, " it is still of the nature of a control exercised by corporators over the corporation, and does not make him and the corporation in any sense identical."

[1] At p. 497. [2] At p. 501.
[3] *Gramophone and Typewriter Limited* v. *Stanley* [1908], 2 K.B. 89.
[4] At p. 99. See also *Kodak Limited* v. *Clark* [1902], 2 K.B. 450 ; [1903] 1 K.B. 505.

II.—The Daimler Case.[1]

It was therefore not surprising that the principal Trading with the Enemy Proclamation dated September 9, 1914 (which professed to warn the King's subjects of the existing law and not to amend it), contained the following paragraph :

"3. The expression 'enemy' in this Proclamation means any person or body of persons of whatever nationality resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country."

Nor was it surprising that the court of first instance and the Court of Appeal when first faced at the end of 1914 with the problem of the national status or character of a company registered in England, but whose 25,000 £1 shares were (with one exception) held by German subjects resident in Germany, should adhere to the view indicated by the cases quoted above and by the Proclamation, and treat the company as a British subject and not an alien enemy. In this—the famous *Daimler Case*[2]—the Continental Tyre Company carried on business in London at its registered office and had a number of agencies throughout the United Kingdom. The directors were German subjects resident in Germany and the business was managed in England by the secretary (a naturalised British subject) and two managers. The defendant, the Daimler Company, admitted liability for the amount claimed on bills of exchange given for goods supplied before the war, but contended that, the plaintiff company being an alien enemy, payment of the debt would be illegal. The Master, before whom the matter came upon the plaintiff's application for leave to sign judgment, Scrutton J. (as he then was) on appeal from the Master, and five out of six members of the full Court of Appeal, Lord Reading C.J., Lord Cozens-Hardy M.R., Kennedy L.J., Phillimore L.J., and Pickford L.J., (as they severally then were), representing a formidable body of judicial opinion, gave judgment for the plaintiff company; the Court of Appeal basing their judgment on the cases of *Salomon & Co.*, *Janson*, and the *Gramophone and Typewriter Limited*, certain

[1] See also the writer's *Some Legal Effects of War* (1920), Cambridge University Press, p. 117.

[2] [1915], 1 K.B. 893.

American cases referred to in Appendix C, and the Proclamation already quoted. The sixth member of the Court, Buckley L.J., now Lord Wrenbury, a distinguished company lawyer, dissented. He affirmed [1] that :

" the artificial legal entity created by incorporation under the Companies Acts is a legal person existing apart from the corporators," and that this corporation was " one which as a corporation certainly has in law an independent legal existence and that legal person is British,"

and he conceived himself to be in no way impairing those principles. But, he proceeded to argue :

" the artificial legal entity has no independent power of motion. It is moved by its corporators. . . . The artificial legal person called the corporation has no physical existence. It exists only in contemplation of law. It has neither body, parts, nor passions. It can neither be loyal nor disloyal. It cannot compass treason. It can be neither friend nor enemy. Apart from its corporators it can have neither thoughts, wishes, nor intentions, for it has no mind other than the minds of its corporators."

Therefore when the corporation came to sue in the King's Court one must inquire what persons were responsible for its litigious activity and of what like they were.

" It is the German corporator who, under the corporate name but still German for the relevant purpose of friendliness or enmity, is the person who comes. He is German in fact although British in form."

Therefore the Continental Tyre Company stood for present purposes in the position of alien enemies, and the action was brought by alien enemies, suing by a corporate name. It seems fair to say that Lord Wrenbury's conception of the distinction of the corporate entity from its corporators is based upon the contemplation of the corporation in a passive state; once it becomes active, the necessity arises of going behind it and scrutinising the persons responsible for this activity.

When the case went to the House of Lords, the appeal was allowed on the ground (which united all the Law Lords present) that the secretary of the Continental Tyre Company had not, and after the outbreak of war could not legally acquire, authority to issue a writ, so that the action must be struck out as irregular. In addition their lordships expressed *obiter* opinions upon the points of substance raised in the Court of Appeal, and we must confine ourselves through lack of space to the majority opinion contained in the speech of Lord Parker, prepared by himself and

[1] [1915], 1 K.B. at pp. 915–921.

Lord Sumner and concurred in by Viscount Mersey and Lord Kinnear. The Earl of Halsbury expressed the more revolutionary view of the nature of a corporation, while Lord Shaw and Lord Parmoor adopted and elaborated the view of the majority of the Court of Appeal. Lord Atkinson confined himself almost entirely to the question of the secretary's power to institute an action, but on the question of substance preferred to associate himself with Lord Macnaghten's view in the *Janson Case* above quoted. Lord Parker's opinion will be found summarised in six propositions.[1] The crux of the argument appears to be this. A natural person, a British subject, may acquire an enemy character and consequent procedural disability in various ways, such as by adhering to the King's enemies, by acquiring what is known in prize law as a commercial domicile among them, or by voluntary residence among them. So also the *prima facie* British character of a company incorporated in this country may be displaced in various analogous ways. In its case, what is the analogue to voluntary residence among the King's enemies?

> " In transferring the application of the rule against trading with the enemy from natural to artificial persons, something more than the mere place or country of registration or incorporation must be looked at." [2]

The analogy will be found in " control." Such a company will assume an enemy character—

> " if its agents or the persons in *de facto* control of its affairs, whether authorised or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under the control of enemies. A person knowingly dealing with the company in such a case is trading with the enemy." [3]

Lord Parker also examined the *ante bellum* English and American cases and did not find them inconsistent with this view.

A considerable portion of Lord Parker's *obiter* views acquired the force of law so far as concerns the Court of Appeal and courts of inferior jurisdiction in the case of *In re Hilckes, ex parte Muhesa Rubber Plantations*.[4]

III.—Summary of the Principal other English Decisions.

It will be convenient if we divide these decisions into two groups according as the doctrine of control or something akin to

[1] [1916], 2 A.C. at p. 344. [2] At p. 339. [3] At p. 345. [4] [1917], 1 K.B. 48.

it was involved to displace (*a*) *prima facie* British or friendly character, or conversely (b) *prima facie* enemy character.

(*a*) To displace *prima facie* British or friendly character.

R. v. *Arnaud and Powell* (1846), 16 L.J.Q.B. 50 : the Court of Queen's Bench directed by mandamus the custom-house officers of the port of Liverpool to accept for registration as a British ship a vessel belonging to a British corporation, chartered by letters patent, some of the members of which were aliens. The policy of our navigation laws was to exclude aliens from the ownership of British ships, and the Merchant Shipping Act then in force required that no alien should be " entitled to be the owner, in whole or in part, directly or indirectly, of any British registered ship." *Held* that the corporation was nevertheless a British subject and entitled to register the ship.

The Tommi and The Rothersand [1914], P. 251 : the President of the Prize Court (Sir Samuel Evans) suggested *obiter* that whatever might be the view of the municipal law upon the ownership of British ships by a British company consisting entirely of alien shareholders, the Prize Court might find it necessary, " looking at the reality of the thing," to regard the particular vessels " as German vessels under the circumstances."

Amorduct Manufacturing Co. v. *Defries* (1914), 31 T.L.R. 69 : *held* by Horridge and Rowlatt J. J. that a British registered company with a factory in England, 1435 shares being held in Germany and 385 by a naturalised British subject formerly German living in England, was not to be treated as an alien enemy and could sue in an English court.

The Poona (1915), 31 T.L.R. 411 (decided after the decision of the Court of Appeal, but before that of the House of Lords, in the *Daimler Case*) : the President of the Prize Court, though not strictly bound by that case,[1] declined to condemn as enemy property the goods of a British registered company all of whose directors were Germans resident in Germany and all of whose shareholders were Germans or other persons resident in Germany.

The Polzeath [1916], P. 241 : the Admiralty Court and the Court of Appeal declared forfeit to the Crown under the Merchant Shipping Act, 1894, a ship registered as a British ship and owned by a British registered company on the ground that the affairs of the company were controlled from enemy territory by a naturalised British subject of German origin who held the majority of the shares. The effect of this control was that the company did not have its " principal place of business " in the King's dominions as is required by the Merchant Shipping Act to be essential to registration as owner of a British ship (the *Daimler Case* was cited in argument before the Court of Appeal). The British shareholders, having omitted to have the ship's register altered and to dissociate themselves from the enemy control, had to suffer.

The St. Tudno [1916], P. 261 : the Prize Court decreed the detention, as an enemy vessel, of a ship registered as a British ship and owned by a

[1] For the convenience of foreign readers we may mention that appeals lie from the Prize Court in England not to the Court of Appeal but to the Judicial Committee of the Privy Council. As a matter of strict law the decisions of the Court of Appeal or of the House of Lor ds do not bind the Prize Court.

British registered company on the ground that it was enemy property or at any rate the property of an enemy-controlled corporation. There were three British directors and some British nominee shareholders, but the directors were mere puppets controlled from Hamburg, and " not a single person other than the Hamburg-Amerika Linie has a penny of interest in this ship." Much reliance was placed on the *Daimler Case.*

In re Hilckes, ex parte Muhesa Rubber Plantations [1917], 1 K.B. 48 : in the case of a British registered company having a rubber estate in a Germany colony the Court of Appeal held that the control and management being British the company had not lost its British character.

Clapham Steamship Co. v. *Vulcaan Co. of Rotterdam* [1917], 2 K.B. 639 : Rowlatt J. was asked to treat a charter party as having been dissolved upon the outbreak of war on the ground that the defendant Dutch company was in reality an enemy company, being owned and controlled by German companies within the meaning of the *Daimler Case ;* but he was able to hold the charter party dissolved on other grounds. (For another case affecting the Vulcaan Co. see the next case.)

The Hamborn [1918], P. 19; [1919], A.C. 993 : the Prize Court condemned as enemy property a vessel flying the Dutch flag and belonging to a Dutch registered company on the ground that she was in reality a German vessel. The whole of the share capital of the company was held by two other nominally Dutch companies, all of whose directors were German subjects resident in Germany; and no person other than enemy subjects had one penny of beneficial interest in the ship or the shipping company, " the centre and whole effective control of whose business was in Germany." So the distinction which excludes the *Daimler* doctrine from the sphere of property does not seem to apply in prize law.

The Vesta [1920], P. 385 : an instance of a Dutch registered company in which 98 shares out of 100 were held by a German subject resident in Germany; with the result that goods belonging to the company were enemy property and were condemned as good and lawful prize. Nor was this consequence excluded by a purported transfer by that German shareholder of all his shares to a Dutchman, resident in Holland, after the outbreak of war but before the seizure of the goods.

In re Badische Co. [1921], 2 Ch. 331 : the doctrine of control was invoked by the official controllers of this and other enemy-controlled companies registered in England as a defence to actions for breach of long-term contracts entered into before the war with British firms and companies. Russell J. upheld the controllers' contention that on the date of the outbreak of war their companies assumed enemy character, because the control was at that moment in the hands and power of persons resident in, and nationals of, an enemy country ; therefore the contracts became contracts with an enemy, and being executory were abrogated by the outbreak of war.

The Kankakee, The Hocking, and *The Genesee* (unreported). On February 4, 1918, the President (Sir Samuel Evans) in the Prize Court condemned these three vessels nominally belonging to the American Transatlantic Company incorporated in the State of Delaware on the ground (*inter alia*) that " the company was in truth a bogus company formed in concert with and in the interests of " an enemy subject.

(*b*) To displace *prima facie* enemy character.

Janson's Case [1902], A.C. 484 (which arose before the specific enunciation of the "control" doctrine): the view was expressed *obiter* that a corporation registered and carrying on business in enemy territory but having a London office and a London committee of management and its shareholders (mainly British) almost entirely resident outside the enemy territory nevertheless remained an alien enemy.

The Roumanian [1915], P. 26; [1916] 1 A.C. 124: *held*, though the point was not very seriously argued, that the Europäische Petroleum Union of Bremen, a German company as an incorporated entity, must be treated as an enemy for prize purposes, although 90 per cent. of its shares were held by neutral and allied subjects.

Elders and Fyffes Limited v. *Hamburg Amerikanische Packetfahrt* A.G. (1918), 34 T.L.R. 275: it was unsuccessfully argued by the enemy defendant that the plaintiff company, though registered in England, was really American in character, as most of the shares were held there and the directors acted on instructions from America. The object of this argument was to make out the company to be neutral in character (the United States being neutral when the writ was issued) in order to escape the abrogation of certain long-term contracts which must have happened if the company took its character from the place of its registration.

The Noordam (No. 2) [1919], P. 255: it was argued on behalf of the American Express Company of New York as claimants in the Prize Court in respect of certain railway bonds seized in the course of transit to New York from the American Express Company of Berlin that the latter company, although technically a German registered company, was entirely American, 99 per cent. of the shares being held by Americans and the remaining 1 per cent. by British shareholders; and therefore that according to the *Daimler Case* the Court should look behind the legal entity of the registered company and discover who the controlling persons really were. This the President (Lord Sterndale) refused to do, "because the judgment of Lord Parker expressly excepted from the operation of that principle the question of property."[1] But contrast *The Hamborn* (*supra*), where the Judicial Committee applied the *Daimler* doctrine to a ship and condemned it.

Finally, an income tax decision of the Court of Appeal in 1921, *Commissioners of Inland Revenue* v. *Sansom*,[2] shows that the integrity of *Salomon's Case* is unimpaired by the *Daimler* doctrine. Sansom converted his business into a private company with a capital of 2500 £10 shares, of which he held all but one, the remaining one being allotted to an employee. The business prospered, and instead of paying dividends to Sansom the company made loans to him, amounting to over £6000, without interest, and without any security. The Commissioners held that the company was a properly constituted legal entity and

[1] [1919], P. at p. 259. See [1916], 2 A.C. at p. 340. [2] [1921], 2 K.B. 492.

that the loans did not form part of Sansom's income for the purposes of super tax; and the Court of Appeal declined to disturb these findings, relying upon *Salomon's Case* and the *Gramophone and Typewriter Limited's Case.*

The Black List.—It is not proposed to examine the various Trading with the Enemy Acts passed during the recent war, but specific mention may be made of the Trading with the Enemy (Extension of Powers) Act, 1915, which established the "Black List" and empowered the Crown to prohibit persons resident, carrying on business, or being in the United Kingdom from trading with certain "black-listed" persons *or bodies of persons* resident or carrying on business in neutral or allied territory on the ground of the enemy nationality or enemy association of such persons or bodies of persons.

IV.—Observations on the Daimler Doctrine.

While recognising that the *Daimler* doctrine has thus become part of the law of England, we may perhaps be permitted to express a personal opinion upon its value and to argue that it should be confined within as narrow limits as possible. We can do this without disrespect by reason of the diversity of opinion which attended its enunciation. If the *obiter dicta* above quoted from *Janson's Case* and the majority judgment of the Court of Appeal in the *Daimler Case* are placed in one scale and the *obiter dicta* in the House of Lords which established the *Daimler* doctrine, together with Lord Wrenbury's judgment, in the other, it is not easy, speaking qualitatively, to say which way the balance goes. The vital point of the doctrine is that just as a natural person, a British or a neutral subject, may become affected with enemy character by the occurrence of certain events, so the same thing may happen to the artificial legal entity known as a corporation which has been incorporated under the law of this country.

What are these events in the case of a natural person?

(i) Voluntary residence in enemy territory; [1]
(ii) Acquisition of a commercial domicile in enemy territory; [2]
(iii) Active adherence to the enemy.[3]

[1] *Scotland* v. *South African Territories Limited* (1917), 33 T.L.R. 255.
[2] *The Indian Chief* (1801), 3 C. Rob. 12; *The Jonge Klassina* (1804), 5 C. Rob. 296.
[3] *Netherlands South African Railway Co.* v. *Fisher* (1901), 18 T.L.R. 116.

The position of a natural person who is " controlled " from enemy territory and yet is not a mere agent for an enemy principal may some day have to be considered.[1]

Now it is above all of the utmost importance that it should be easy to ascertain whether you are dealing with an alien enemy or not. Certainty should be our aim. Viewing from this aspect the foregoing modes of acquiring enemy character, voluntary residence in enemy territory is a simple question of fact and rarely becomes a matter of doubt; active adherence to the enemy is rare and, moreover, is usually comprised within voluntary residence in enemy territory; commercial enemy domicile presents more difficulty but usually involves some definite overt act of trading from an enemy port. But when we turn to the case of a British registered corporation and the analogous events capable of investing it with enemy character, we are told by Lord Parker that in transferring to it from natural persons the application of the rule against trading with the enemy we must find (in addition to commercial enemy domicile) an analogy in " control "; and thereupon a vista of uncertainty is opened up which in a great many cases that can be imagined renders it a very difficult task to advise a client whether he can safely deal with the corporation as a friend or must shun it as an enemy. Lord Parker himself realised [2] the dangerous uncertainty of any test turning upon the proportion of shares held by enemies; but the " control " test is, it is submitted, much more baffling. The relevant facts are extremely difficult to extract except in a court of law, as many of the decided cases show; and, once that has been done, the grades of control are infinitely subtle and may range from mere influence to actual supervision or to absolute subjection. There could be no objection in principle to the revocation by the State of a charter or a certificate of incorporation if it is being abused, just as under the British Nationality and Status of Aliens Acts of 1914 and 1918 a certificate of naturalisation can in certain circumstances be revoked. But we submit that convenience is on the side of a rule which would treat a British registered corporation as a British

[1] As to Agency, see *Maxwell* v. *Grunhut* (1914), 31 T.L.R. 79, and *Tingley* v. *Müller* (1917), 2 Ch. 144. For a case of a person having a commercial domicile in a neutral country who departs to an enemy country and *thence* controls his business in the neutral country, see *The Antwerpen* [1919], P. 252 (n.).

[2] [1916], 2 A.C. at p. 346.

subject unless and until it were shown that it was carrying on business in enemy territory or adhering to the King's enemies, *e.g.* by supplying munitions of war to them.

Turning to the legal limits of the *Daimler* test, Atkin J. (as he then was) interpreted it to be confined to (i) a prohibition against trading with a company thus found to be enemy-controlled, and (ii) the inability of such a company to sue in a British court.[1] Lord Parker himself contemplated as probable the exclusion from the test of " questions of property and capacity of acts done and rights acquired or liabilities assumed thereby "; [2] but, as we have seen in reviewing the decisions, the Prize Court has eagerly adopted it as a test of the enemy character of property and found it to be entirely in accord with the traditional duty of that court—

" to pull off this mask and exhibit the vessel so disguised in her true character of an enemy's vessel." [3]

And in the case of *in re Badische* [4] Russell J. did not hesitate to apply it as a test of the abrogation of executory contracts made before the outbreak of war. So the *Daimler* test is also uncertain in the scope of its application.

For these reasons, it is submitted, with respect, that it would have been better in the *Daimler Case* to have followed the *dicta* in *Janson's Case* and to have said with Denman C.J. in *Reg.* v. *Arnaud & Powell*: [5] " If it be *casus omissus*, and evil consequences arise, they may be remedied by the interference of the legislature." In fact, the legislature had already interfered by a series of Trading with the Enemy Acts and had provided ample safeguards against mischief; thereunder an inspector of the Continental Tyre Company had been appointed in August, 1914, and moreover the Board of Trade had received, before the case reached the House of Lords, power to appoint a controller of the company.

" It is the province of the statesman, and not the lawyer, to discuss, and of the legislature to determine, what is the best for the public good, and to provide for it by proper enactments. It is the province of the judge to expound the law only." [6]

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[1] *Continho Caro & Co.* v. *Vermont* [1917], 2 K.B. at p. 590.

[2] [1916], 2 A.C. at p. 340.

[3] Per Lord Stowell in *The Fortuna* (1811), 1 Dodson at p. 87.

[4] [1921], 2 Ch. 331.

[5] (1846), 16 L.J.Q.B. at p. 55.

[6] Per Parke B. in *Egerton* v. *Brownlow* (1853), 4 H.L.C. at p. 123; cited [1915], 1 K.B. at p. 912.

Moreover, the plea of alien enemy is an " odious plea " [1] and ought not to be extended except on very sure foundations.

V.—Summary of the Present English Law.

A summary may now be attempted of the present state of our municipal law and of public international law as administered by British courts on this point.

(i) A corporation incorporated in Great Britain is a legal entity, an artificial person, distinct from the persons of its members.

(ii) Such a corporation while carrying on business in this or a friendly country through officers duly authorised and residing in this or a friendly country has *prima facie* friendly character, and His Majesty's lieges may deal with it as such.

(iii) The enemy character and the conduct of individual members of such a corporation cannot *per se* affect the character of the corporation.

(iv) But such a corporation may in certain circumstances assume an enemy character. This may result (*a*) when the corporation carries on business in the enemy country, or in some other way as in the case of a natural person acquires a commercial domicile among the King's enemies; or (*b*) when " its agents or the persons in *de facto* control of its affairs, whether authorised or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy [2] or taking instructions from or acting under the control of enemies."

(v) Enemy character acquired in mode (iv) *b* above attaches for the following purposes: (*a*) to disable the corporation from suing in a British court; (*b*) to make it the criminal offence of " trading with the enemy " for any of his Majesty's lieges to have intercourse, commercial or otherwise,[3] with such a corporation; (*c*) to cause the abrogation of executory pre-war contracts made between such a corporation and persons resident or carrying on business in this country; (*d*) at any rate for prize purposes, to stamp with enemy character the property of such a corporation.[4]

[1] Per Lord Kenyon C.J. in *Casseres* v. *Bell* (1799), 8 T.R. at p. 167.

[2] *Netherlands South African Railway Co.* v. *Fisher* (1901), 18 T.L.R. 116.

[3] *Robson* v. *Premier Oil and Pipe Line Co.* [1915], 2 Ch. at p. 136.

[4] The indebtedness of this summary to Lord Parker's six propositions ([1916], 2 A.C. at p. 344) is of course obvious.

Appendix A.

As Regards the Ownership of British Ships.

(*a*) Among the persons qualified by the Merchant Shipping Act, 1894, s. 1, to be owners of British ships are :

> " Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in these dominions."

As we have seen (*R.* v. *Arnaud & Powell*[1]), the individual members of the body corporate may be aliens. But if in reality the control is in the hands of aliens, then it was held during the recent war in the case of alien enemies that on two grounds the ship may fail to qualify as a British ship: (i) by reason of the enemy control (the *St. Tudno*[2]), and (ii) because the " principal place of business " is the place from which such control is exercised (the *Polzeath*[3]). The relevance of these decisions to a British registered ship controlled by alien friends, either in time of peace or of war, has yet to be considered.

(*b*) Until December 23, 1922, no " former alien enemy " was allowed to acquire any share or interest in a company owning a British registered ship.[4]

(*c*) By the British Ships (Transfer Restriction) Act, 1915 and 1916, until August 31, 1924, no transfer of a British registered ship to a person not qualified to own it or to a " foreign controlled company " as defined by the Act of 1916 shall have any effect unless the transfer is approved by the Board of Trade.

Appendix B.

Under the Treaty of Versailles.

The Treaty itself contains no direct answer to the question under discussion. But the Treaty of Peace Order, 1919 (Sec. II.), declares that

> " the expression ' Nationals ' in relation to any State includes the subjects or citizens of that State and any Company or Corporation incorporated therein according to the law of that State. . . ."

An editorial note in *The British Year Book of International Law*, 1922-23,[5] deals fully with the matter and with the relevant decisions of the Mixed Arbitral Tribunals, and we merely refer to it here in order to associate this article with that note.[6]

Appendix C.

In the United States of America.

Upon the outbreak of war a small amount of judicial authority on the point was already in existence, though it was not free from ambiguity and, according

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[1] *Supra*, p. 50. [2] *Supra*, p. 50. [3] *Supra*, p. 50.

[4] Aliens Restriction Act, 1919, s. 11, sub-ss. 1 (*c*) and 2.

[5] Pp. 186–8.

[6] See also " Société des Mines de Saint-Pierremont " in *Journal du Droit International* (Clunet) (1921), XLVIII. p. 956.

to Lehman J. of the New York Supreme Court, appears to have been misread by Lord Reading C.J. and Lord Parker in the *Daimler Case*.[1]

In *Bank of the United States* v. *Deveaux* [2] in the Federal Supreme Court, Marshall C.J. held that for the purpose of ascertaining whether the parties to an action were in fact citizens of one State suing citizens of another State (so as to confer jurisdiction upon the Federal Court), the Court could look behind the corporate name of the Bank (which as a corporation could not be a citizen) to ascertain who the members were and of what State they were citizens. Later in *Society for the Propagation of the Gospel* v. *Wheeler* [3] (not a very helpful case) a body of British citizens incorporated in England was allowed to sue in the United States during the war of 1812, but it seems from the judgment of Story J. that, if the plea of alien enemy had been properly pleaded and all possible presumptions against that plea had been negatived, the Court would have investigated the real character of the corporators (who were enemy) and refused to them the right to sue.[4] In 1917 in *Fritz-Schultz Co.* v. *Raimes Co.*[5] (which has been followed in later cases) the New York Supreme Court adhered to the pre-*Daimler* view and stated that :

> " at the present time the courts of this country are entirely wedded to the doctrine that the corporators of a corporation are conclusively presumed to be citizens of the same State as the corporation."

So the *Daimler* doctrine of control has not been adopted by the American Courts.

Appendix D.

In France.

The outbreak of war found French law and practice very much in the same position as our own, namely that " la nationalité d'une société s'établit par son siège social." But under the stress of war this view was modified, partly by judicial decision [6] and partly by administrative order, until it gave way to a ruling substantially the same in effect as that laid down in our *Daimler Case*. In France, however, the result was achieved by drawing a distinction which, it is submitted, was not open to us in this country, namely between public and private law. To quote from an official circular issued in 1916 :

> " Les formes juridiques dont la société est revêtue, le lieu de son principal établissement, la nationalité des associés, gérants ou membres du conseil du surveillance, tous les indices auxquels s'attache le Droit Privé pour déterminer la nationalité d'une société sont inopérants alors,

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[1] Garner : *International Law and the World War*, Vol. I. p. 227.
[2] (1809), 5 Cranch 61.
[3] (1814), 2 Gall. 105.
[4] Garner; *op. cit.*, Vol. I. p. 226; Buckley L.J. [1915], 1 K.B. at p. 919.
[5] 100 Misc. (N.Y.), 697, cited Garner, *op. cit.*, Vol. I. p. 227.
[6] See " Société Conserve Lenzbourg " in *Journal du Droit International* (Clunet) (1915), XLII. p. 1164.

qu'il s'agit de fixer au point d'une du Droit Public, le caractère réel de cette société " (*sic*).[1]

Appendix E.

Some Recent Publications.

Garner : *International Law and the World War.* Vol. I. pp. 217–240. 1920. London : Longmans, Green & Co. Norwood, Mass. : The Plimpton Press. 8vo. Pp. xviii + 524.

J. E. G. Montmorency : " The Black List " in *Problems of the War : Papers read before the Grotius Society in the year 1917.* Vol. III., 1918, pp. 29–35.

Ernest J. Schuster : " The Nationality and Domicil of Trading Corporations " in *Problems of the War : Papers read before the Grotius Society in the year 1916.* Vol. II., 1917, pp. 57–85.

Lt.-Col. F. Norris : " The Nationality of Companies " in *Journal of the Society of Comparative Legislation,* October, 1921, 3rd series, Vol. III. Part IV. pp. 273–276.

" The Nationality of Incorporated Companies under the Treaty of Versailles " in *The British Year Book of International Law,* 1922–23, pp. 186–188.

Charles G. Loeb : " Condition Légale des Sociétés Etrangères aux Etats-Unis " in *Journal du Droit International* (Clunet), Vol. XLXIX., 1922, p. 311.

André Pépy : *De la nationalité des sociétés de commerce,* 1920. Paris : Libr. de la Soc. du Rec. Sirey. In-18. Pp. xi + 310.

Carlo Piola Caselli : " La Nazionalità delle Società Commerciali e il Registro dei Commercianti " in *Giurisprudenza Italiana,* Vol. LXXIII. fasc. 8, 1921. " La Nazionalità delle Società Commerciali : un caso tipico " in *Foro Italiano,* Vol. XLVI. fasc. 16, 1921. " Contribution à l'étude du problème de la nationalité des sociétés de commerce " in *Journal du Droit International* (Clunet), Vol. XLVIII., 1921, p. 824.

J. E. Hogg : " Companies with Enemy Shareholders " in *Law Quarterly Review,* Vol. XXXI., 1915, p. 170. " The Personal Character of a Corporation," *Ibid.,* Vol. XXXIII., 1917, p. 76.

See also *Tables générales et tables annuelles du journal du droit international* (Clunet) under " Société étrangère " during the past few years for a number of references to the topic in different countries.

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[1] Cited in " The Nationality of Companies " by Lt.-Col. F. Norris in *Journal of Comparative Legislation,* 3rd series, Vol. III. Part IV. p. 275 (October, 1921) in a notice of *La Nationalité des Sociétés* by André Pépy, Librairie de la Société du Recueil Sirey. Reference should also be made to a Bill regarding the rights of foreign corporations in France which is at present before the Senate.

DOMICILE AS A TEST OF ENEMY CHARACTER

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I.

The wars of the nineteenth century revealed a definite and well-established cleavage between the practice of the States of Continental Europe and that of Great Britain and the United States in the test applied for the purpose of determining enemy character. Most continental countries, in seeking to define the persons who were to be regarded as alien enemies, adopted nationality as the criterion. Thus in the case of *Le Hardy* contra *La Voltigeante* [1] the French Conseil des Prises in 1802 laid down the principle that enemy subjects domiciled in neutral countries retain their enemy character and that neutral subjects domiciled in enemy countries retain their neutral character. It is true that the principle was not carried to its logical conclusion so as to treat neutral subjects resident in occupied territory in a different manner from enemy subjects resident there, and when at the second Hague Conference in 1907 Germany proposed that special treatment should be accorded in such cases to neutral subjects, *e. g.* that no war tax should be levied on them, the proposal was energetically opposed by the delegations of France, the Netherlands and Russia, as well as Great Britain, and was abandoned.[2] But subject to this exception, the continental countries adhered strictly to the principle of nationality, in particular with regard to the exercise of the right of capture of enemy vessels and goods in warfare at sea. Allegiance was with them the test of an "enemy."

On the other hand, in the British Empire and the United States, nationality has not been adopted as a criterion either for the law applicable in private matters or for the purpose of deter-

[1] Pistoye et Duverdy : *Traité des Prises Maritimes*, Vol. II. p. 321.

[2] A. Pearce Higgins : *Hague Peace Conferences*, pp. 85, 293. Scott : *Proceedings of Hague Peace Conference of 1907*, Vol. I. p. 154.

mining enemy character. For the latter purpose the principle of commercial domicile has been made by them [1] the dominant factor, and this principle has been explained by Lord Justice Scrutton in *Tingley* v. *Müller* [2] as follows:

"Originally war declared by one prince against another involved in its consequences all the subjects of both, who were exhorted in the customary proclamation '*Courir sus aux ennemis*.' . . . Allegiance was then the test of 'alien enemy.' In the time of Calvin's case [3] the *alienigena* (alien born) might become an enemy by a war with his prince. It is this governing principle that is stated by Lord Davey in the *Driefontein Case*.[4] But with the growth of commerce and greater tenderness to private property an alleviation or exception was introduced into the rule of allegiance or nationality. An alien enemy by allegiance could lose his enemy character for the time if he was residing in the King's dominions or trading there by the licence of the Crown. . . . A subject by allegiance could, for the time, lose his friendly or national character by residing or trading in the enemy's dominions. Either party by trading or residing in a neutral country might acquire for the time being a neutral character. The conditions under which this loss of national character might be achieved and under which the new character by residence might be lost have been carefully considered by Lord Stowell in several cases where questions of trading with the enemy or the enemy ownership of property seized as prize were in dispute. The conditions of this character are sometimes called 'domicil,' but by that phrase is not meant 'civil domicil'—what Lord Lindley calls 'real domicil'—but a condition more easily acquired and lost, called by some of the text writers 'commercial' or 'trade domicil'—'domicile in a peculiar sense differing considerably from ordinary domicile, which is known as trade domicile in war, but is equally applicable to persons not engaged in trade.' . . . Civil domicil is such a permanent residence in a country as makes that country a person's home. Commercial domicil is such a residence in a country for the purpose of trade or otherwise as makes a person's trade or estate form part of its resources."

Postponing a further consideration of the elements constituting "commercial domicile," it may be said that the importance attributed to it as a test of enemy character in the British and American view is based on the fact that a foreigner residing and doing business in a State is largely under its control.

"He cannot be made to serve it personally in war, but he contributes by way of payment of ordinary taxes to its support, and his property is liable, like that of subjects, to such extraordinary subsidies as the prosecution of a war may demand. His property being thus an element of strength to the State it may reasonably be treated as hostile by an enemy. Conversely when the foreigner lives in a neutral country, he is so far subject to its sovereignty that it can restrain him from taking advantage of its territory to do acts of hostility against the

[1] And also by Japan: see *Russian and Japanese Prize Cases*, Vol. II. p. 25.
[2] (1917) 2 Ch. 172–3. [3] (1608) 7 Rep. 1*a*. [4] (1902) A.C. 499.

enemy of his State, and it is responsible for his acts, if he does them. For the purposes of the war, therefore, he is in reality a subject of the neutral State." [1]

II.

Amongst the questions submitted for discussion at the Naval Conference of London in 1908 was " the question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property." The British memorandum suggested that the principle of domicile was " both sounder and more practical," but the British delegation was instructed that the principle was not of such importance as to make insistence on it a vital matter.[2] At the Conference an agreement was reached as to ships, and Article 57 of the Declaration of London provided that " the enemy character of a vessel is determined by the flag which she is entitled to fly." But the Powers were unable to agree as to the definition of enemy character as applied to goods. Strenuous arguments were raised against domicile as a test. It was pointed out that from the point of view of the captor the advantages to be derived from the principle of domicile were more imaginary than real. The commerce of a foreigner should be regarded as an element of the wealth of the foreigner's own country, since it is from the expansion of its commerce across the world that a nation derives its commercial power. Every State encourages and protects the commerce of its nationals abroad, and the effect of the British rule in time of war would be to compel it to treat the commerce of its subjects in enemy territory, encouraged and protected in time of peace, as enemy commerce.[3]

It was urged by the German delegate that the adoption of the principle of domicile would be absolutely incompatible with the German system of national defence. If a reserve officer established a house of trade in a country with which Germany declared war and returned to Germany to fulfil his military obligations, he would not by that act cease to have a commercial domicile in the enemy country, and his goods carried under an enemy flag would, therefore, be liable to confiscation. To indemnify him

[1] W. E. Hall : *International Law*, 7th ed., p. 526.

[2] *Parl. Papers*, Misc. No. 5 (1909), p. 32. The memoranda of Spain and Japan supported the British proposal, but those of other Continental States were solidly against it.

[3] *Parl. Papers*, Misc. No. 5 (1909), p. 332.

from the loss would be impossible, because neutral States would be entitled to demand the same treatment for their subjects domiciled in enemy territory. Again, the principle of domicile would have the effect that while goods belonging to an enemy subject domiciled in neutral territory would be exempt from confiscation, the vessel of such a person carrying his national flag would be confiscated.[1] The Committee appointed to review the question also took into consideration the fact that the principle of nationality would be in conformity with Article 16 of the fifth Hague Convention of 1907, providing that " nationals of a State not taking part in the hostilities are considered as neutrals."

In favour of the principle of domicile it was pointed out that it answers better than any other the end of the captor, that it alone permits striking a blow at enemy commerce, and that the nationality of a person engaged in the commerce of any country is of little importance, because the commerce of an individual is the commerce of the country where it is carried on. Moreover, from the practical point of view domicile is a question more easily determined than nationality.[2]

A majority of the Committee was in favour of putting an end to the uncertainties revealed in actual practice by adopting the following provision :

" The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy nationality of their owner, or, if he is of no nationality or of double nationality (*i. e.* both neutral and enemy), by his domicile in a neutral or enemy country." [3]

But unanimity was not forthcoming and this provision remained without effect, the Declaration being silent on the subject.[4] Thus, at the outbreak of war in 1914, each belligerent was free to define enemy character in accordance with its accustomed practice, untrammelled by treaty obligations. The British courts, therefore, continued to treat domicile as the decisive factor. It is proposed in the following pages to examine in detail the working of the principle of domicile and to point out in what ways it was found necessary to modify it by statutory intervention in a war of world magnitude.

[1] *Parl. Papers*, Misc. No. 5 (1909), p. 258. [2] *Ibid.*, p. 332.

[3] *Ibid.*, No. 4 (1909), p. 35.

[4] The Manual adopted by the Institute of International Law at Oxford in 1913 made no attempt to solve the problem. See Article 51 of *Proposed Laws of Maritime War in Respect of the Relations between Belligerents.* Barclay : *International Law and Practice*, Appendix VII., p. 282.

III.

In English law the fact that a person is an "alien enemy" involves at least three consequences: he cannot sue in an English court; his property carried on board an enemy ship is liable to confiscation on capture of the ship; and British subjects are forbidden to engage in commercial intercourse with him. The British cases all turn on these aspects of the problem of enemy character, and in all of them the rule laid down is that the term "alien enemy" is not synonymous with the term "enemy subject," but that the criterion is the commercial domicile of the person involved.

The first question to be discussed is the manner in which an enemy subject can free himself from the disabilities of an alien enemy by acquiring a non-hostile domicile. The definition of commercial domicile given in Dicey's *Conflict of Laws* has been quoted with approval in so many cases that it may be accepted as the authoritative view of the British courts. He says—

"commercial domicile is such a residence in a country for the purpose of trading there as makes a person's trade or business contribute to or form part of the resources of such country, and renders it, therefore, reasonable that his hostile, friendly, or neutral character should be determined by reference to the character of such country." [1]

An enemy subject seeking to establish such a friendly or neutral commercial domicile must offer affirmative proof of its acquisition. In the case of *The Flamenco*,[2] H., a German subject, carried on his trade at Coquimbo in Chile, a neutral country. Shortly after the outbreak of war he left Chile for a destination which was presumed to be Switzerland. Sir Samuel Evans in his judgment said:

"In the claim and affidavits . . . it is stated that 'though a German subject he does not reside or carry on business in an enemy country.' That does not supply the proper test. If he had given up his trade domicile in Coquimbo it matters not to what country he betook himself. If he had gone to the United States or to Switzerland (as was suggested) he would, for the purposes of this case, be as clearly an enemy as if he had from a sense of patriotic duty returned to his native land."

It is clear that in the view of the British courts residence is an essential element in the constitution of a friendly or neutral

[1] Appendix, Note 4, p. 741.
[2] 1 B. and C.P.C. 509. Cf. *The Derfflinger* (No. 3) 1 B. and C.P.C. 643.

domicile. The fact that an enemy firm carries on a business through agents or clerks in a neutral State will not give the firm or the partners a neutral domicile. Thus in the case of *The Hypatia* [1] certain goods belonging to a partnership firm at Buenos Aires were seized as prize. All the partners were Germans resident at Antwerp who had been expelled from Belgium as enemy subjects shortly after the outbreak of war. Sir Samuel Evans condemned the goods, holding that—

" a commercial domicile, such as is here claimed, cannot be established without proof of a sufficient residence of the partners or some of them in the country where the business is carried on or where the house of trade is situate." [2]

Similarly, in an exhaustive judgment in the case of *The Annaberg*,[3] Cator J. declared that—

" residence which is immaterial to the conception of civil domicile is essential to constitute a trade domicile. But the residence must, I think, be of a semi-permanent character. A clear distinction is to be drawn between the enemy merchant who resides and does business in his own country but at the same time has a house of trade in a foreign land, and his fellow-citizen who, without intending to change his nationality or his civil domicile, settles in the same country and trades there in person. The latter acquires a trade domicile; the former does not. . . . To confer that domicile I think the residence must be more than temporary."

The only case which is in apparent conflict with this view is that of *The Yonge Klassina*,[4] in which Lord Stowell said :

" A man may have mercantile concerns in two countries, and if he acts as a merchant of both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries. That he has no fixed compting houses in those countries will not be decisive. . . ."

But it has been pointed out in several subsequent cases that *The Yonge Klassina* is no decision that the existence of a house of trade in a neutral country without residence there by the trader will confer on him a neutral domicile. The case was one involving the question of carrying on a trade outside and beyond that authorised by a particular licence to trade.

It should be added that the acquisition of a commercial domicile is not confined to traders. An enemy subject who is residing, without carrying on business, in a neutral or friendly country will not be treated as an enemy. Thus in the case of *Princess*

[1] (1917) P. 36.
[2] See also *The Rostock*, 1 B. and C.P.C. 523.
[3] 2 B. and C.P.C. 241.
[4] (1804) 5 C. Rob. 297.

Thurn and Taxis v. *Moffitt* [1] it was held that permission to remain in England divested an alien enemy who had been registered in accordance with the requirements of the Aliens Restriction Act 1914, of enemy character so far as the right to bring an action in a British court was concerned. Moreover, the fact of internment does not necessarily alter the position of a registered alien. So in *Schaffenius* v. *Goldberg* [2] the plaintiff was an interned civilian prisoner who had long resided in England and had duly registered himself under the Aliens Restriction Act. It was held that he was entitled to bring an action to enforce a contract entered into between him and a British subject after the internment of the plaintiff.

But the protective commercial domicile acquired by an enemy subject may be easily lost, since " it is a loose cloak easily assumed and as easily discarded." [3] In *La Virginie* [4] a Frenchman trading in America left it temporarily, shipped goods from a French colony and subsequently returned to America. Lord Stowell held that he had lost his American domicile and laid down the general principle that—

" the native character easily reverts and it requires fewer circumstances to constitute domicile, *i. e.* his national domicile, in the case of a native subject than to impress the national character on one who is originally of another country." [5]

But the exact moment at which enemy character reverts is not always free from doubt. The question was discussed by the Court of Appeal in *Tingley* v. *Müller*.[6] In that case the defendant, a German by birth, had resided for many years in England, but without being naturalised. On May 20, 1915, being about to return to Germany, he executed a power of attorney, appointing his solicitor his attorney to sell his leasehold house and to execute such transfer and deeds as were necessary. The power of attorney was made irrevocable for twelve months. On May 26 the defendant obtained a permit from the British Government to proceed to Tilbury with a view to embarking for Germany *via* Flushing and he started on that date. On June 2 the leasehold house was sold to the plaintiff by public auction and

[1] (1915) 1 K.B. 869.

[2] (1916) 1 K.B. 184. This was a case of " innocent " internment, and the rule would probably not apply to internment for hostile acts. See McNair : *Essays and Lectures upon some Legal Effects of War*, p. 25.

[3] Cator P. in *The Annaberg*, 2 B. and C.P.C. 242.

[4] (1804) 5 C. Rob. 98.

[5] Cf. *The Flamenco*, 1 B. and C.P.C. 509.

[6] (1917) 2 Ch. 143.

a deposit was paid and an agreement signed by him. There was no evidence as to the date when the defendant reached Germany, but it was admitted to be some time between May 26 and June 11, 1915. The Court of Appeal held that at the date of the sale the defendant had arrived and was resident in Germany and was, therefore, an alien enemy. But in the course of the judgments delivered by the members of the court interesting divergencies of opinion arose as to the exact moment when the defendant was vested with the character of an alien enemy. Scrutton L.J. quoted the language of Lord Stowell in *The Indian Prince*,[1] to the effect that—

"it must be held that from the moment he turned his back on the country where he had resided, on his way to his own country, he was in the act of assuming his original character and is to be considered as an enemy. The character that is gained by residence ceases by residence. It is an adventitious character which no longer adheres to him from the moment that he puts himself in motion, *bona fide*, to quit the country *sine animo revertendi*."

The learned Lord Justice, therefore, held that on May 26 or 27 Müller lost his English commercial domicile when he left England and, in the absence of any evidence that he had acquired any other character by the assumption of another commercial domicile, his national character determined by allegiance reverted and he became an alien enemy the moment he left England. "If you can find no domicile his birth or allegiance settles this question."[2] On the other hand, Cozens-Hardy M.R.[3] and Bray J.[4] were of opinion that Müller did not become an alien enemy the moment he left our shores. The former cited *Porter* v. *Freudenberg*[5] in support of the proposition that neither nationality nor domicile is the true test; he stated that residence in Germany was necessary to make Müller an alien enemy and that mere intention to reside was insufficient. It is submitted with all deference that the learned Master of the Rolls was mistaken in his interpretation of *Porter* v. *Freudenberg;* there is no passage in the judgment in that case laying down the proposition that enemy character cannot revert except by residence in hostile territory. In fact there is a line of cases supporting the view taken by Scrutton L.J., and Lord Stowell's *dicta* in *The Indian Prince* quoted by him had been expressly approved by the House of Lords in *Udny* v. *Udny*.[6]

[1] 3 C. Rob. 20. [2] (1917) 2 Ch. at p. 175. [3] *Ibid.*, at p. 155.
[4] *Ibid.*, at p. 182. [5] (1915) 1 K.B. 857.
[6] (1869) L.R. 1 H.L. Sc. 441. See also *The Flamenco*, 1 B. and C.P.C. 509.

IV.

The acquisition of a hostile commercial domicile is more conveniently treated as a separate question, because the term covers a wider field than the term friendly or neutral commercial domicile. While residence is essential to establish the latter, a person may acquire a hostile commercial domicile without residing in enemy territory provided he is a partner in a house of trade situate there. The extension of the term commercial domicile to cover this last case is perhaps unfortunate—the late Sir Samuel Evans carefully refrained from using it in such a sense [1]—but it has received the sanction of the Judicial Committee of the Privy Council in the case of *The Anglo-Mexican* [2] and must, therefore, be regarded as authorised.[3]

Thus a hostile commercial domicile may be acquired either by residence and carrying on business in a hostile country or by being a partner in a house of trade there.

To treat first of the acquisition of an enemy domicile by residence, it was laid down in *Porter* v. *Freudenberg* [4] that such acquisition is not confined to persons carrying on a business but extends to any person " who is voluntarily residing there, having elected to live under the protection of the enemy State." The meaning of the term " voluntary residence " was raised in the case of *Scotland* v. *South African Territories, Ltd.*,[5] where the plaintiff was the defendant company's manager in German South-West Africa on the outbreak of war. Although subject to a measure of internment during the war, and presumably unable to leave the country, he was able to protect the defendant company's interests and to preserve their business. Darling J. interpreted as " voluntary residence " a certain amount of detention in enemy territory not amounting to complete captivity, and held that the plaintiff was an alien enemy during his residence in German South-West Africa.

In deciding whether a hostile commercial domicile has been acquired the courts will take into consideration the duration of the residence and the object. In *The Diana* [6] the case of Mr. Whitelaw was quoted. He reached St. Eustatius a few days

[1] See his judgment in *The Manningtry* (1916), p. 329. [2] (1918) A.C. 423.

[3] See Dr. Baty : " Trade Domicile in War," *Journal of Comparative Legislation*, Vol. IX. pp. 157–166; and Westlake's reply, *ibid.*, pp. 265–268.

[4] (1915) 1 K.B. 857 at p. 869.

[5] (1917) 33 T.L.R. 255. [6] 5 C. Rob. 60.

before the British forces appeared there, but since it was proved that " he had gone to establish himself there " his goods were condemned. But as Lord Stowell declared in his classic judgment in *The Harmony :* [1]

" time is the ground ingredient in constituting domicile. I think that hardly enough is attributed to its effects ; in most cases it is unavoidably conclusive . . . I cannot but think that against a long residence, the plea of an original special purpose could not be averred. . . . No rule can fix the time *a priori*, but such a time there must be."

The consequences of the establishment of a hostile domicile were pointed out by Sir Samuel Evans in *The Manningtry ;* [2] as soon as hostilities occur the trader's goods are subject to capture at sea, even though they were shipped before the war, or in ignorance of the existence of war.

But it is always open to such a merchant to abandon his hostile domicile on the outbreak of war, and provided he has taken some unequivocal step indicating an abandonment of his acquired domicile before his goods are captured, they will be treated *prima facie* as neutral property.[3] But according to the view of the majority of the Supreme Court of the United States in *The Venus* [4] a neutral trader must take steps to abandon his hostile domicile immediately war breaks out. This case was quoted by Sir Samuel Evans in *The Manningtry* [5] and he added that " if it be obligatory on a neutral to take such immediate steps, it is none the less obligatory upon the subject of a belligerent."

Turning to the acquisition of a hostile domicile by the establishment of a house of trade in enemy territory, independently of personal residence, the rule was thus stated in *The Anglo-Mexican :*

" It seems clear that a neutral wherever resident may, if he owns or is a partner in a house of business trading in or from an enemy country, be properly described as an enemy in respect of his property or interest in such business. He acquires by virtue of the business a commercial domicile in the country in or from which the business is carried on, and this commercial domicile will affect the assets of the business house or his interest therein with an enemy character."

In this case, R. M., a naturalised American citizen, was a partner in the German firm of Reis & Co., of Baden, and conducted

[1] 2 C. Rob. 220.
[2] (1916) P. 329 at p. 339.
[3] *The Anglo-Mexican* (1918) A.C. 423.
[4] (1814) 8 C. 253.
[5] (1916) P. 329 at p. 342.

a business of the branch at Boston in the United States, having one-fifth share in the profits. Before the outbreak of war he shipped goods bought in America on *The Anglo-Mexican*, some to Antwerp, some to Hamburg, in both cases to order. The goods were seized as prize and were condemned by the Judicial Committee of the Privy Council. A lengthy and instructive judgment was delivered by Lord Parker in which he reviewed the whole question of commercial domicile in relation to a house of trade in an enemy country. Having given the definition quoted above, he proceeded to discuss whether a neutral subject who is a partner in a house of trade in hostile territory without being resident there should be allowed a reasonable interval " during which he may discontinue or dissociate himself from the business in question." He pointed out that if such steps were taken before the property were captured it would not be confiscable, and even if the capture were effected before he had taken the necessary steps to dissociate himself from the business, the court might still let the question of condemnation stand over till a reasonable interval had elapsed in order to allow him to take action. But if such interval had passed and no steps had been taken the goods would be confiscable. He referred to the judgment of Lord Kingsdown in the case of *The Gerasimo* [1] in support of these propositions. In R. M.'s case a reasonable interval had elapsed since the outbreak of war, but he had continued to display activity in the affairs of Reis & Co., and had not attempted to dissociate himself from the firm. Accordingly the goods must be condemned. The contention of R. M. that they were exempt from confiscation because they had been shipped before the outbreak of war was invalid, because it ignored the doctrine of commercial domicile as determining the character of goods.

> " It leaves the character of such goods to depend on personal domicile subject to the question whether the owner has done anything to impress them with enemy character. In other words, it creates an exception to the theory of commercial domicile and deals with the excepted cases on different principles."

A limit was set to this doctrine of commercial domicile independent of personal residence in the case of *The Lutzow* [2] (No. 5), in which a firm with its head office in New York had a branch in Hamburg and another in Japan. The shares in the

[1] (1857) 11 Moore P.C. 88, 96.

[2] 3 B. & C.P.C. 37 (1918), A.C. 435.

firm were held by citizens of the United States except a few held by British subjects. The branches in Hamburg and Japan were not incorporated separately and were in no way separate firms or entities. Before the outbreak of war the branch in Japan ordered goods through the Hamburg branch for delivery in Japan. The goods were shipped on a German ship which was captured and the goods were seized as prize. Sir Arthur Channell delivering the judgment of the Judicial Committee of the Privy Council quoted Lord Stowell's *dictum* in *The Portland* [1] to the following effect :

> " I know of no case, nor of any principle, that could support such a proposition as this; that a man having a house of trade in the enemy's country as well as in a neutral country, should be considered in his whole concerns as an enemy merchant, as well in those which respected solely his neutral houses as in those which belonged to his belligerent domicile."

In the court below the learned Judge had held that the firm had not acted with reasonable promptitude in winding up their Hamburg branch and that the goods in question were, therefore, confiscable. But the Judicial Committee decided that the goods were not the property and never had been the property of the Hamburg branch as such, since they were merely acting as agents of the Japanese branch and apart from arranging the terms of the purchase had nothing further to do with the matter; before the war broke out they had parted with all control of the goods. The court, therefore, held that " the real and live ownership of the goods was neutral."

It has already been pointed out that the doctrine of commercial domicile does not apply so as to exempt from enemy character the goods of enemy subjects having a house of trade in a neutral country but resident in hostile territory. In *The Clan Grant* [2] Sir Samuel Evans pointed out that while it is true that if a person carries on business in a hostile country he has his commercial domicile there, " the converse of the rule is not extended to the case of a person in a hostile country having a share in a house of trade in a neutral country." If his own personal residence is in enemy territory his share in the property of the neutral house is liable to condemnation. The validity of this distinction has been attacked by Wheaton on the ground of its " want of reciprocity," but it was defended as a fair rule

[1] 3 C. Rob. 41.

[2] 1 B. and C.P.C. 272.

by Sir Samuel Evans, who quoted, with approval, Dana as saying :

" There appears to be no sound reason for demanding the application to these cases of what is called reciprocity. Reciprocity implies two parties who make some equitable exchange or offset of rights or benefits yielded or enjoyed. The cases stated in the text are rather those of two positions of a third party, each having an element of hostile connection presented conversely. In the one case, a stranger to the belligerents is a neutral as far as his personal domicile is concerned, but he has an active commercial interest involved with the enemy's interest and subject to the enemy's control. In the other, his special commercial interest referred to is neutral so far as locality is concerned; but by reason of his personal domicile, he is himself subject to the enemy's control and liable to compulsory service and to taxation and forced contributions, which may reach and include the profits of his commercial house in the neutral country. . . . The two cases are independent. The question in each is, whether the element of hostile connection or control which is present, is sufficient to warrant a belligerent in taking the property *jure belli*." [1]

The distinction thus drawn between the two cases raises the question whether a man may acquire a commercial domicile in more than one country. It seems clear that this is possible when a person resident in a neutral country has a house of trade in enemy territory. As appears from *The Anglo-Mexican*,[2] he acquires a hostile commercial domicile in respect of the assets of the house of trade, but his other property is not affected with enemy character and will be treated as neutral in view of his neutral residence.

But can a person acquire a commercial domicile in two neutral countries? The *dictum* of Lord Stowell in *The Yonge Klassina*,[3] to the effect that " a man may have mercantile concerns in two countries, and if he acts as a merchant of both he must be liable to be considered as a subject of both," has already been mentioned. Sir Samuel Evans discussing this in *The Hypatia* said :

" It must not be taken that I am expressing an opinion as to whether a man can have a commercial domicile in two neutral countries which would entitle him to be regarded as a neutral trader in both. I can conceive that it is possible that he might establish a sufficient residence in both." [4]

Perhaps, however, the position was more accurately expressed by Mr. Justice Cator in the case of *The Annaberg* [5] when he said :

[1] Wheaton : *Elements of International Law*, 8th ed., edited by Dana, note to § 335.

[2] (1918) A.C. 423.

[3] (1804) 5 C. Rob. 297.

[4] (1917) P. 36 at p. 40.

[5] 2 B. and C.P.C. 241 at p. 245.

" Suppose a man to have houses of business in two countries and to spend half the year in each, or to flit about between them, the Court might well declare that he had no commercial domicile anywhere, and might decline to give him the advantages attaching to such a domicile in either country, but none the less might subject him to all the inconveniences attributable to that position in both."

V.

Certain incidental questions in connection with the doctrine of commercial domicile remain to be discussed. The first case is that of European subjects resident or carrying on business in Eastern countries where consular jurisdiction and exterritorial privileges have been granted them. The question came before British prize courts in the cases of *The Eumaeus* [1] and *The Lutzow*.[2] In the former case the question whether any of the partners could acquire a neutral commercial domicile in Shanghai was not necessary for the decision of the case, but the court expressed the opinion that—

" having regard to the exterritorial condition of European traders in Shanghai they were precluded from claiming a neutral commercial domicile there."

This opinion was confirmed in the case of *The Lutzow*, where it was held that two German merchants who had resided and carried on business for forty years in China had not acquired a commercial domicile there. The court, adopting Dicey's definition of commercial domicile, proceeded as follows :

" Can it be said that a person who pays no taxes to the country in which he is living, is more or less beyond the civil control of the country, whose conduct is regulated by his own judicial courts, who only pays such duty on imports and exports as have been arranged by treaty with his own State, and who in some extraterritorial countries cannot own the smallest parcel of land—can it be said that he is a person ' whose trade or business contributes to or forms part of the resources of such country and renders it, therefore, reasonable that his hostile, friendly, or neutral character should be determined by reference to the character of such country ' ? "

On these grounds the court held that a commercial domicile cannot be established by individuals resident in countries where they are granted the privileges of extraterritoriality.[3]

[1] 1 B. and C.P.C. 605. [2] 1 B. and C.P.C. 528.

[3] For a criticism of these decisions see Huberich in *Law Quarterly Review*, October, 1915, p. 447. In *Casdagli* v. *Casdagli* (1919) A.C. 145, the House of Lords held that a British subject resident in Egypt might acquire an Egyptian *civil* domicile.

The next class of case to be considered is that of persons resident or carrying on business in territory under enemy occupation. The effect of a hostile occupation was discussed at length by the Privy Council in *The Gerasimo*,[1] where the various British authorities were reviewed and the conclusion reached that mere possession of a territory by an enemy's force does not, of itself, necessarily convert the territory so occupied into hostile territory or its inhabitants into enemies. The court drew a distinction between hostile occupation and possession clothed with a legal right by cession or conquest or conferred by length of time, and held that—

" the national character of a place is not changed by the mere circumstance that it is in the possession and under the control of a hostile force."

On the other hand, in the case of *The Gutenfels*,[2] Port Said was held to be a port enemy to Germany within the meaning of the sixth Hague Convention of 1907,

" having regard to the relations between Great Britain and Egypt, to the anomalous position of Turkey, and to the military occupation of Egypt by Great Britain."

The judgment quoted with approval the passage in Hall's *International Law*,[3] where it is stated that :

" When a place is militarily occupied by an enemy the fact that it is under his control and that he consequently can use it for the purposes of his war, outweighs all considerations founded on the bare legal ownership of the soil." [4]

The American view was stated in the case of *Bentzon* v. *Boyle*,[5] in which Chief Justice Marshall said that :

" Although acquisitions made during war cannot be considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose they are considered as part of the domain of the conqueror so long as he retains the possession and government of them."

This view appears to be more in conformity with the general principles underlying the doctrine of commercial domicile, as

[1] 11 Moore P.C. 88. [2] (1916) 2 A.C. 112. [3] 6th ed., p. 505.

[4] The question was raised by Counsel in *The Leonora* (1918) P. 182 at p. 190, and (1919) A.C. 974 at p. 98, but the case turned on other considerations, and neither Sir Samuel Evans nor the Judicial Committee expressed any opinion on the effect of the German occupation of Belgium on the enemy character of persons resident in occupied Belgian territory.

[5] (1815) 9 Cranch, 195.

Lord Reading C.J. pointed out in *Porter* v. *Freudenberg*,[1] these principles are—

" grounded upon public policy which forbids the doing of acts that are or may be to the advantage of the enemy State by increasing its capacity for prolonging hostilities in addition to the credit, money or goods, or other resources available to individuals in the enemy State. Trading with a British subject, or the subject of a neutral carrying on business in the hostile territory, is as much assistance to the alien enemy as if it were with a subject of enemy nationality carrying on business in the enemy State and, therefore, for the purpose of the enforcement of civil rights, they are equally treated as alien enemies."

These arguments would apply with equal force to territory in the occupation and under the control of the enemy even though not legally falling under enemy sovereignty.[2] Considerations of space make it impossible to do more than mention the application of the principle of commercial domicile to incorporated companies : [3] Lord Parker, of Waddington, expounded the prevailing English view on the subject when he declared in *The Daimler Company, Ltd.* v. *The Continental Tyre and Rubber Company*,[4] that the place of incorporation does not fix the enemy character of a corporation. The analogy to residence or commercial domicile is to be found in control. Enemy character is to be attributed to a company if the person who in fact controls its affairs reside or carry on business in enemy territory.

The American courts have on several occasions expressly refused to follow the decision of the House of Lords in *The Daimler Company* v. *The Continental Tyre and Rubber Company*, and to attribute enemy character to corporations incorporated and registered in the United States but controlled by enemy subjects. In *Fritz-Schultz Company* v. *Raimes Company*,[5] the American view was thus stated by Justice Lehman :

" The courts have indicated practically unanimously that they regard a corporation as an entity separate and apart from its corporators; that its domicile is as a matter of law within the State of its creation; and the courts

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[1] (1915) 1 K.B. 857 at p. 868.

[2] The British *Trading with the Enemy* (*Occupied Territory*) *Proclamation* of February 16, 1915, provided that Proclamations for the time being in force relating to trading with the enemy should apply to territory in hostile occupation as they applied to an enemy country.

[3] The subject is dealt with in this volume at p. 44.—Ed.

[4] (1916) 2 A.C. 307 at pp. 339–340. For a learned discussion of this question see Schuster : *Nationality and Domicile of Trading Corporations*, Grotius Society Publications, Vol. II. pp. 57 ff. An account of the French attitude is given in Garner : *International Law and the World War*, Vol. I. para. 153.

[5] 100 Misc. (N.Y.) 697 (1917), cited in Garner, *op. cit.*, Vol. I. p. 227.

will not regard it merely as an association of individuals or regard the domicile or character of the corporators as affecting the domicile or character of the corporation."

VI.

During the World War the adherents of both doctrines—nationality and commercial domicile—were compelled to modify their respective positions.

In France, where nationality had been the decisive factor in determining enemy character, the decree of September 27, 1914, prohibiting trading with enemies, included in the category of " enemies " not only " sujets des empires d'Allemagne ou d'Autriche-Hongrie," but also " personnes qui sans être sujets de ces empires y résident," [1] thus combining the principle of nationality with that of domicile.

In Great Britain the courts, as we have seen, adhered rigidly to the principle of domicile, but experience showed that the principle could not " provide a sufficient basis under modern commercial conditions intended to deprive the enemy of all assistance direct or indirect from national sources." [2] Accordingly, Parliament stepped in, and the Trading with the Enemy (Extension of Powers) Act, 1915,[3] authorised His Majesty by proclamation to prohibit all persons in the United Kingdom from trading with enemy persons in foreign countries whose *enemy nationality or enemy association* made such prohibition expedient. In accordance with this Act, the so-called " Black Lists " were issued from time to time containing the names of such enemy persons. A similar policy was adopted by the United States on her entry into the war as a belligerent.[4]

Moreover, statutes such as the Aliens Restriction Act 1914 with the amending Act of 1918, and the Trading with the Enemy Amendment Acts of 1916 and 1918, dealt with persons of enemy nationality resident in Great Britain, and also with corporations incorporated according to the laws of an enemy State but carrying on business with this country; such individuals and corporations were placed under special disabilities.[5]

[1] Reulos: *Manuel des Sequestres*, p. 231.

[2] Sir Edward Grey's letter to Mr. Page, *Parl. Papers*, Misc. No. 11, 1916 (Cmd. 8225).

[3] 5 and 6 George V. c. 98.

[4] See Garner, *op. cit.*, Vol. I. para. 144 and pp. 155–161.

[5] For a detailed account of British legislation on this subject see Roxburgh: *Journal of Comparative Legislation*, 1920, pp. 269–283; McNair: *Essays and Lectures upon some Legal Effects of War.*

All these statutes represent a new attitude on the part of Great Britain to the question of enemy character. Just as a rigid adherence to the principle of nationality was found by the French to allow too wide a scope to hostile financial, commercial and economic activity, so also the principle of domicile proved itself inadequate as a means of depriving the enemy of assistance from national sources. In the words of Sir Edward Grey :

" The Anglo-American doctrine crystallised at a time when means of transport and communication were less developed than now, and when, in consequence, the action of persons established in a distant country could have but little effect upon a struggle. To-day the position is very different. The actions of enemy subjects are ubiquitous, and under modern conditions it is easy for them, wherever resident, to remit money to any place where it may be required for the use of their own Government, or to act in other ways calculated to assist its purposes and to damage the Powers with whom it is at war. . . . In fact it would be no exaggeration to say that German houses abroad have, in a large number of cases, been used as an integral part of an organisation deliberately concerned and planned . . . for the furtherance of German political and military ambitions." [1]

It is safe to predict that if the world is unfortunate enough to see another war of the dimensions of the last, the belligerents will not be contented to rely solely on one or other of the two alternative principles of nationality and domicile, but would combine the two in some proportion. The path now seems clear for the conclusion of an international convention defining enemy character. Combining the two principles in their widest application the general effect of such a convention would be as follows :

Enemy character attaches to all enemy subjects wherever resident or carrying on business. It also attaches to all persons resident or carrying on business in enemy territory and territory under enemy occupation. In respect of corporations, enemy character attaches to

(*a*) corporations incorporated in enemy territory;
(*b*) corporations incorporated elsewhere, if enemy subjects constitute the majority of the directing body, or hold the majority of the shares or voting power themselves or by nominees, or control the corporation by any means whatsoever; and
(*c*) corporations carrying on business in enemy territory.

[1] *Parl. Papers*, Misc. No. 36, 1916 (Cmd. 8353).

PRIZE CASE NOTES IN THE DAYS OF STOWELL

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The Revolutionary and Napoleonic Wars belong to a now distant past. Our present hope is that wars henceforth may cease. For both these reasons the international lawyer, beset with urgent problems of his own day, may be tempted to think the story of the definition and development of prize law in the days of Stowell a relatively unimportant, though no doubt an interesting, department of his subject. But it would be rash indeed to count war already dead. The significance of Stowell's work far transcends the narrow bounds of his immediate province. The Great War taught us that no problem of the past—not even the questions of joint capture which bulked so largely in Admiralty judgments a hundred years ago—can be safely dismissed as wholly irrelevant to modern conditions and, moreover, that available prize records of Stowell's time are often insufficient to show clearly by what arguments and precedents the rules of law were gradually established.

The historian of international relations is even less able than the lawyer to scorn the study of past controversies, however unrelated their issues may seem to present politics. For he is concerned with every question, legal not less than economic or political, that has led to international debate : more especially, perhaps, if he deals with relations between Great Britain and America, he knows the immense significance of controversies which, whatever their political, commercial, or sentimental content, were in form at least disputes over questions of law. Such controversies have more than once threatened, and once actually caused, war between the two nations, and they have, moreover, done much to create that historical tradition which, broadcast through countless popular text-books, has mainly determined the typical American conception of Great Britain.

Among these controversies none have been more acute or

more fruitful in mischief than those which in 1812 precipitated a useless, injurious war and even a century later, in the early stages of the struggle with Germany, predisposed an unforgetful people to jealous watchfulness lest American interests or American honour should suffer infringement by the British fleets. In investigating recently a topic connected with these quarrels—the legal and diplomatic history of the case of the *Essex* (Orne), and its bearing on the Doctrine of Continuous Voyage in 1793 to 1815—I have had painful occasion to realise how insufficient for such inquiries are both the published records of prize judgments and the unpublished "printed papers" of cases stored in the Public Record Office, which after 1800 lack even an index of ships and at all times anything approaching to a conspectus of the main issues in question. But, searching diligently for other sources of information, I have been lucky enough to gain no little help from fifteen bundles of the "Miscellaneous" documents of the High Court of Admiralty in the Record Office,[1] which, catalogued under the general title "Notes of Cases, *circa* 1790–1830," have apparently been undisturbed by readers since their arrival in Chancery Lane. Though I have not yet had leisure for more than a very cursory survey of their contents, even within the limited sphere of my own inquiries, I gladly avail myself of the opportunity kindly offered by the Editors of *The British Year Book of International Law* to place my discovery of the real nature of these records at the service of other students. For, with all their defects, the documents seem to deserve the serious attention of both historians and lawyers. They provide the historian of the disputes which preceded the war of 1812 with a mass of information not otherwise accessible in any convenient form, if at all. They provide the lawyer with a like fund of detailed evidence as to the evolution of prize law, doing thereby not a little towards supplying two wants lately emphasised by the learned Registrar of the Admiralty Court: the lack of "material for a consideration of the civilian lawyers" and "of their skill in maritime and prize matters" before Sir William Scott became Admiralty Judge in 1798;[2] and the lack of collected records of prize appeals during the French wars other than those in Acton's Reports for 1809–1811.[3]

[1] H.C.A. Misc., 464–478. [2] *Law Quarterly Review*, January 1923, p. 135.

[3] E. S. Roscoe: *Lord Stowell: His Life and the Development of English Prize Law*, pp. 30–31.

The fifteen bundles consist mainly of notes of cases in the Admiralty Court and the Court for Prize Appeals during the Revolutionary and Napoleonic period.[1] These notes, though not indeed professional " Reports " like the volumes published by Sir Christopher Robinson and his successors, were made by two of the " civilians " of whom Mr. Roscoe speaks, and those, moreover, men not merely actively engaged in prize law business but holding official positions of dignity and importance. While where they run parallel with the published reports they record many more cases,[2] though in a manner less ample and possibly less skilful than Robinson's, even the Admiralty notes, and much more the notes of appeals, cover considerable periods for which no collected records have been printed.[3]

The documents that concern us fall into two main groups.[4] The first comprises notebooks of " Sir John Nicholl, Knt.," whose famous opinion on the requisites of a " broken voyage," given on March 16, 1801, was so signally and mischievously important in the controversy over the *Essex* case.[5]

Nicholl, who was born, like the younger Pitt, in 1759 and was admitted an Advocate at Doctors' Commons in 1785, was unsuccessful when in 1791 he applied to Pitt for the post of Advocate to the Admiralty, vacant through the death of Dr. Bever. Yet Pitt's response encouraged him to hope for eventual promotion,[6] and, in 1798, he succeeded Sir William Scott as King's Advocate, with a knighthood, and held the office till in 1809 he became Dean of Arches and Judge of the Prerogative Court.

[1] Like Robinson's Reports, they include cases from the " Instance Court," besides some appeals to the Court of Delegates; but a very large proportion of the notes refer to prize cases.

[2] In 1798–1799 Nicholl reports some 75 per cent. more cases than Robinson.

[3] Marsden's reports end in 1774; Robinson's begin with the appointment of Scott as Judge in the autumn of 1798. Between these there is only the first volume (all that was ever issued) of the reports of Hay's and Marriott's judgments, covering the period Michaelmas 1776 to Hilary 1779, and reprinted in an American edition, edited by G. Minot (*Decisions in the High Court of Admiralty during the time of Sir G. Hay and Sir J. Marriott*, Boston, 1853).

[4] A third group, including records of ecclesiastical cases, by the same two civilians, may be here neglected.

[5] By a *lapsus calami*, easy enough to make when writing away from authorities, this opinion is ascribed to Robinson, Nicholl's successor as King's Advocate, in Dr. Baty's article on " The Portland Ministry and the History of Continuous Voyage ": *Law Quarterly Review*, July, 1922.

[6] Nicholl to Pitt, 8 and 13 November, 1791 : Chatham Papers, Vol. 176 (Public Record Office).

His Admiralty Court notebooks for his period of office as King's Advocate [1] comprise two pre-war volumes—for 1781–1792 and 1788–1792 respectively—and eight war volumes covering between them the period May 1793 to December 1808. The first pre-war book, a parchment-bound quarto, lettered "H," contains, besides miscellaneous records, fair copies of notes on a hundred numbered cases, about one-third of which are appeals; the second, a smaller, leather-bound volume, records in rougher form sixty-three cases. The eight war volumes form a series of medium-sized, leather-bound notebooks, including in all some 2750 pages. The notes in all these books were made by Nicholl himself, and from time to time omissions are explained by such observations as: "left the Court before Mr. Erskine concluded his argument"; "the remainder of the Note lost"; or "Drs. Wynne and Bever had argued for the Plaintiff before I came into Court." The very moment when counsel began and ended their speeches is often noted: we can almost hear the writer's sigh of relief as some long-drawn argument comes at last to its close. Sometimes there are signs of personal amusement, as when Nicholl records Scott's suggestion that Chapeaurouge, evidently a person notorious in the Prize Court, "may be one of the best men of the age"; or of criticism, as when an assertion by the Judge is followed by "Qy. I think not so—see the table in the Registry." A secondhand record, marked as being copied "from a note taken by Mr. Arnold," is a rare, perhaps a unique, exception.

A note will sometimes merely record a judicial *dictum*, or state a case and its decision, but more generally "the Court" is reported with some fulness. Until Nicholl becomes King's Advocate [2] he often records or summarises the arguments of counsel, omitting, however, with rare and insignificant exceptions, his own contributions, which are merely indicated by a reference to his original papers—"J.N. *q.v.*" [3] Thus, while even the later volumes may supplement Robinson's reports, those before the autumn of 1798 do more. They illustrate the condition of the law when Scott had not yet begun his judicial work.

[1] H.C.A. Misc. 464 and 465.

[2] From 1793 to 1798 counsel are reported in *circa* 45 per cent. of the notes; from 1798 to 1808 only in *circa* 4 per cent.

[3] The reference to papers is sometimes more explicit, *e. g.* "See full note among Papers (alphabetically) of 1799," or "among the abstracts of Cases in 1799: alphabetical order."

They provide fresh and fuller materials for estimating the capacity of Scott's predecessor, Sir James Marriott, whose judgments Story thought so mischievously original, and whose racy style occasionally enlivens even Nicholl's decorous pages: "if not paid, how the devil . . .?"; "another egg of the same case!" They show Scott himself, as King's Advocate, arguing now for captors, now for claimants, and with or against him his brother civilians—Drs. Addams and Arnold, Bever and Laurence, and others—or sometimes the Law Officers of the Crown, *e. g.* Scott's own brother, the future Lord Chancellor Eldon. Further, and this is a point which every student of the period will appreciate, they record numerous cases which, though they never became "leading," or found their way into law text-books or standard histories, had yet a real importance both in the development of international law and in the tangled tale of international relations.

In December, 1808, Nicholl wrote "Finis" in a half-filled book, his eighth war volume, and brought his notes to an end. His work as King's Advocate was now over, though he was to return to the Admiralty Court in 1833, as Judge in succession to Robinson, and hold office till his own death in 1838.[1] In 1809, however, becoming Privy Councillor and a member of the Board of Trade, he was appointed also to sit on the Court of Appeals for prize cases, where he appeared on the bench from March 2nd onwards. For another eight years he went on adding to his notebook "Z," a folio of "Notes of Prize Appeals, 1794–1817," in which, first as one of the ordinary practising counsel, then as King's Advocate or as one of "My Lords," he recorded methodically, though with occasional wide gaps, what he considered the salient points of important appeals.[2] Nicholl's appeal notes, however, whether here or in his "H" notebook, were but a minor feature of his work and they are far excelled in both bulk and importance by those in the second group of the documents under discussion.[3]

[1] The records of his work as Judge—a volume lettered "1833 to 1838. Admiralty Notes of Cases. By Sir John Nicholl, Judge," and a bundle of corresponding notes, evidently made by Nicholl in court—form H.C.A. Misc. 475.

[2] H.C.A. Misc. 466.

[3] Nicholl's remaining Admiralty MSS. (H.C.A. Misc. 467) consist of three bound volumes, viz. (*a*) "A Digest of Prize Cases," *i. e.* an index of topics in prize law with references to "H," "Z," and many other notebooks not now in his collection; (*b*) "Orders in Council, etc., relating to Prize Cases (1780–1796)"—the contents of which

This group comprises two sets of notes: first, fifty-six "Admiralty" notebooks, recording Admiralty Court cases from May 5, 1781, to December 9, 1786, and from July 7, 1787, to February 24, 1829, with a special case in 1790;[1] second, five books[2] and ten bundles[3] of unbound papers, containing nearly eight hundred notes of appeal cases in 1794–1822, and two cases of 1786–1787.

Unlike Nicholl's books, this second group of records appears to bear from beginning to end no direct evidence of authorship, or even ownership—no inscription, book-plate, or casual reference. But, though these papers may have eventually belonged to Nicholl himself, and though he seems at any rate to have used some of them occasionally, the handwriting alone suffices to show that they are not his own work. From circumstantial evidence, albeit this falls short of proof, it is virtually certain that the note-taker was James Henry Arnold, D.C.L., of Brasenose and Trinity Colleges, Oxford, who was born in 1758 or 1759, succeeded Robinson as Admiralty Advocate on November 25, 1811, and Stowell as Vicar-General in 1821, and, having been also Chancellor of Worcester, died on January 15, 1836, some time after resigning all his preferments.[4] For, just as Nicholl refers to himself as "J. N.," while giving the full names of other counsel, so the anonymous note-taker constantly reduces one name only to an initial, and that as "Dr. A." A comparison of his notes with Nicholl's proves from time to time that the "Dr. A." of the first is the "Dr. Arnold" of the second. Again, when Nicholl writes: "Two Senegal cases—see in Dr. A.'s note what the Court [blank] better Proof can be produced by having recourse to French lawyers," the corresponding note in the other series begins its report of "the Court" in full accord with Nicholl's reference: "Can but think would be practicable for captors to bring evidence more satisfactory. Could they not get opinion of eminent French Lawyers whether these decrees meant . . . ?"[5] Finally, the last note in the fifty-sixth

are really very miscellaneous and by no means confined within the dates given; (*c*) "Miscellaneous Notes," which answer very well to their title, and are only partially connected with maritime or any other law.

[1] H.C.A. Misc. 470–474. [2] H.C.A. Misc. 468. [3] H.C.A. Misc. 469.

[4] Haydn: *Book of Dignities* (which, apparently in error, makes him an M.P.); *Register of Brasenose College*, p. 373; *Gentleman's Magazine*, 1836 (February), p. 212.

[5] Cf. *supra*, Nicholl's reference to a note "taken by Mr. Arnold." Possibly Arnold left his books with Nicholl when he himself retired, which would account for the intermingling of the two collections.

" Admiralty " book is made in February 1829, a fortnight before the appointment of Arnold's successor Dodson as Admiralty Advocate.[1]

Here, then, in the Admiralty books, is a set of records covering the same ground as Nicholl's notes, with twenty additional years, and performing the same threefold service. They form, so far as the two series are parallel, a most useful check on Nicholl, by way of correction, complement, or confirmation. They furnish, what he omits, accounts of the arguments he himself delivered and often supply his neglect of dates, Masters' names, and other details of great importance for identifying and distinguishing cases apt without such guidance to be erroneously distinguished or confounded. Perhaps, also, they sometimes give a better account of cases; at any rate a comparison of the two notes of the famous judgment in the *Polly* (Laskey) with each other and with Robinson's report, suggests that Arnold would hardly have misapplied this case so mischievously as Nicholl did in the opinion on " broken voyages " already cited.

Again, the appeal records form a collection unrivalled except for Acton's reports and the few reports, summaries, and citations scattered through Robinson's volumes. These records trace carefully from day to day—sometimes even from case to case—the changing composition of the Court, a matter of considerable significance on occasion. They report, often at some length, both Court and counsel: the case of the *Maria* (Paulsen)—or the Swedish convoy—fills forty-seven of the narrow columns into which the writer folds his unbound papers. If one may presume to hazard a guess on a hasty and imperfect survey of cases connected with a single topic—the matter of Continuous Voyages—they should prove to contain material of great value to students of law and diplomacy alike, material not to be obtained otherwise, perhaps, even by the most indefatigable researcher into the countless " printed papers " and other official prize records of the Admiralty Court.[2]

[1] The rest of the book—some three-fourths of the whole—is left blank. Loose notes of cases, including some of May to December 1829, show only that the writer still visited the Court occasionally throughout that year.

[2] The first book deals with the *St. Eustatius* case, 1787; the first bundle with the *Hoogskarpel* case, 1786; but all the rest belong to the period 1794–1822. Most of the loose notes are made on large sheets folded and refolded so as to provide many narrow columns, which are sometimes numbered to show the sequence of the entries. About one-tenth of the notes merely record the action of the Court; occasionally there are blanks after the names of " My Lords "; once at least the writer reports his own absence from the Court for several sessions—on February 10, 12, and 19, 1803.

A single example, however, is worth more than a score of assertions or surmises, and I therefore subjoin part of a record copied for the purposes of my own immediate inquiries, which may serve to show both the character of Arnold's notes and the manner in which they illustrate the work of the Court itself and of Counsel (here Scott, as King's Advocate) in the Court.

The ship was the American *Sally* (Choate), seized for having on board the produce of a French colony: the case was an appeal of the claimants from the decision of Marriott in the court below, while restoring ship and cargo, to refuse costs and damages. The court comprised the Lord President of the Council (the Earl of Mansfield), the Master of the Rolls (Sir Richard Pepper Arden, afterwards Lord Alvanley), Lord Walsingham, Sir W. Wynne, Sir Grey Cooper, and Mr. Douglas (afterwards Lord Glenbervie). The case was heard on May 6, 1796, with Mr. Hardinge and Dr. Laurence as Counsel for the appellants, and the King's Advocate (Sir W. Scott) and Mr. Dallas for the captors. Scott opened for the respondents. Dallas followed, maintaining that they might have claimed condemnation and that in any case there could be no question of costs and damages, the captor having been not merely entitled but bound to make the seizure. Hardinge and Laurence denied the applicability of the Rule of War of 1756; insisted on the binding force of practice during the War of American Independence; challenged the right of the captor to cite in his defence the Instructions of November, 1793 (since rescinded), when he had not known of them at the time of the capture; and insisted that, anyhow, if the Instructions were against the law of nations, the Judge was not bound by them and could not make them a ground for refusing costs and damages to the injured neutral, though the captor should be indemnified by the Crown.[1] The Lord President, the Master of the Rolls, and other members of the Court intervened from time to time to raise a point or clear an issue, as in this short dialogue.

"*Mr. Hardinge:* In [the] last war [it is] said [a] new form [was] given to this fraud: general passes [were] given.

Lord President: Not so; but France had opened Commerce of West Indies.

[1] It is of some interest to note the distinction which Laurence draws between Instructions to the Judge and Instructions to Commanders, assuming both to be contrary to international law. "King by prize act has right to send Instructions to Court of Admiralty: if sent to Judge and contrary Law of Nations—matter of State. Instructions sent to Commanders not binding on Judge."

Sir W. Wynne: In prospect of War.
Master of the Rolls: But this Court would not hold that it [had been] in prospect, etc."

The extract following comprises the reply of the King's Advocate, and the judgment delivered by the Lord President. Abbreviations in the original are expanded and the words in brackets added to make the sense more immediately obvious.

"Sir W. Scott,

"If [the] Doctrine etc. first took rise in case of adopted ships [1], [it] outgrew that principle, & that will not apply to all cases in the war.[2] [We] must look for some more general principle.

"First [ships] had special passes; afterwards others with no such. [The] Principle [was] general: Interposition in distressed Commerce of Enemy—neutral enjoying commerce which [he] could not in peace—[is] attaching himself to Enemy. [The] Neutral has right to require his commerce shall not be disturbed by War—[that he] shall be at Liberty to carry on as at other times. This doctrine [based?] on Bynkershoek & others. But that shall go farther—Neutrals devise [3] Advantages of new Trade from necessity of War—snatch Enemy from distress to which reduced—this [is] Enlargement of Neutral Claims beyond Justice.

"If this apply in Cases allowed in time of peace [it] applies stronger to points of commerce in which neutrals cannot trade in peace. [The neutral] must not interpose to assist Enemy to carry on War which without assistance [he] could not carry on. Not only under special passes, but wherever Enemy had interposed any act—wherever Interposition to assist Enemy, confiscation followed.

"[It is] said [the] Rule [was] altered.[4] [But it really] stood on the same ground. [There was] variation in application of it on variation of Circumstances: Circumstances [were] different, or thought so, & that [the] principle of previous decision [was] not applicable.

"But last War [there had been a] Declaration of France by which [she] notified to [the] world [a] change of system [and] that this [was] not done with view to Hostilities. Those who know most of France's Conduct most doubt sincerity of professions, but [she] did change and opened ports.

"When Cruizers brought in Vessels [the] question [was] argued: Is this Relaxation produced by necessity of War? and whether [we] have right to presume will expire with War? Court thought [itself] not warranted to say [it] was produced by necessity of War: [it was] made before War; might be sincere & permanent. Same circumstances not existing, same rule [did] not apply. After peace—at some Interval—France retracted, a Subject of great Complaint, by America particularly.

"Some alterations have taken place in [the] Colonial System by establishing free ports; but those [have been] established under great Restrictions as to

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[1] *i. e.* neutral ships virtually incorporated in the enemy's mercantile marine.
[2] *i. e.* the Seven Years' War.
[3] ? meant for "derive."
[4] *i. e.* in the war of 1776–1783.

Exports and Imports [1] & particular kinds of vessels: not free and general Reception of Vessels of other Countries. After French ports [were] shut up & fallacy of former Transaction shown, many Discussions passed between France & America. America [was] allowed to send Lumber & to export Rum, Coffee, & Taffia. No Commerce in other Commodities.

" After [the] Revolution, when [the] power of [the] Mother Country over Colonies [was] languid, many Irregularities [were] practised by Governors of West Indies,—some Proclamations issued by persons in irregular possession of power, relaxing &c.: other Countries knew little of these & doubted [their] authority. Many Americans rushed to take advantage of this Relaxation: this [was the] only authority under which commerce [was] carried on in any articles but those specified in Treaty. This [was the] state of things.

" Captor finding Articles on board which could be purchased only in West Indies, will [the] Court impose on Captors [the] burden of deciding for themselves & [their] Country under such critical Circumstances—or admit [the] propriety of [their] deciding—that [the] authority of these Relaxations [was] good, though [the] Treaty [did] not justify—& [that the goods should be?] released?

" [The Captor] would forget duty if [he] had done so. But [the] King had issued Instructions: this was Law from that time. Captor [was] right to apply it to [his] own protection, though [he did] not know it. If [he did] not know it at Seizure, finding such when [he] returned to port [he was] bound to proceed to adjudication.

" [It is] objected [that a] farther order [was] issued.[2] [But] Captor [was] not competent to decide whether [it was] to be retrospective: [he was] bound to submit to decision of [the] Court.

" [He] has acted meritoriously. [There was] no Impropriety in [the] Seizure. [He is] entitled to Benefit of [the] Instructions: bound to proceed. Pray Costs.

" The Lord President.

" [I] wish to state [my] opinion on [the] general Circumstances, as [it is a] Case of Importance.

" [It has been] argued satisfactorily by [the] King's Advocate. [But I] wish to state grounds of [my] individual opinion. [I] wished to obtain [a] book of great authority which [I] could not on [the] moment, [therefore I] state from memory.

" Bynkershoek on [the] State of Neutrals. Neutral asks whether [he is] permitted everything during War which [he was] before. [Bynkershoek] lays down general Principle—then Exceptions. As Exceptions, Contraband, Besieged Towns, &c.—then—not to open new source of Trade or advantage arising out of circumstance of being State of War, which [would be] disadvantageous to one of [the] belligerent parties—not to derive benefit from what [is] injurious to them: then, not to benefit one party to disadvantage of other.

" On this Ground [the] Seizure [was] correct, without reference to Instructions or particular Circumstances of [the] Case.

" [I] give as my clear opinion [that] all these Seizures [were] warranted,

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[1] ? or " Exportation and Importation."

[2] *i. e.* the Instructions of January, 1794.

[and] would have gone to Condemnation if [there had been] no particular Instructions.

" [The] Principle of [the] Decisions of 1756 [was] correctly stated by [the] King's Advocate. Those in last war went on [the] same general ground, not admitting applicability to the particular case, considering [the] Relaxation of France as general [relaxation] of [the] colonial system on reasons of general policy : therefore in decisions [the Court] adhered to [the] principle of Bynkershoek, permitting what [was] authorised before War.

" Subsequent policy of France showed that [it was] a feint. [There has been] no subsequent general declaration of Relaxation since.

" [I] consider [the] Instructions as necessary. Latter part of the Sentence : [1] [appellants have] founded on this as vexatious an appeal as could be, & nothing could be more proper than Sentence of Judge below not to subject Captor to Costs for following orders received.

" [The Court] affirmed refusal of Costs & Damages, condemning Appellant in Costs of Appeal."

In another case raising the question of Continuous Voyage, which also eventually went to appeal, the *Britannia* (Barnum), a note of Nicholl's, for July 4, 1794, records the arguments of Scott for the captor and Laurence for the claimant (his own, following Scott's, being only referred to in his usual formula— " J. N. *q.v.*"), and the decision of the Judge, Marriott. The vessel, carrying from America to France French West India produce, which had been landed in America and reshipped, was under a double charge; first, infringement of the Instructions of January, 1794, which, said Scott, were " merely a declaration of the former law "; second, " piratically running away " after capture by an English ship while on the voyage to America, and trying to escape liability by a transfer to a new owner who, however, retained the original owner on board as supercargo. The defence denied the continuity of the voyage, objected to merely hearsay evidence as to the running away, which was contradicted by the supercargo and the captain, and insisted on the legality of the trade and the genuinely American character of the cargo. Marriott's judgment appears as follows :

" [The] matter [is] very clear. [The] claim [is] by Hoskins, who [was] the original owner and now supercargo. [The] last voyage [was] from Boston to Bordeaux. Part of [the] cargo [was] purchased at St. Lucia, carried into America, landed in America, and reshipped. Documents [are] all fair, Bill [of] lading accurate, risk, etc. Instructions [are] from Tisdale, owner, to Hoskins. [The captain] did not avoid capture, but did not know what the three mariners would say [about the running away]; their account, *q.v.* Though

[1] *i. e.* the refusal of costs and damages.

[they] speak from hearsay, yet it is a matter to be cleared up and easily cleared up. [The] Supercargo and Master speak in exoneration of self.[1] [We] may have direct [affidavit?] proof on [the] part of [the] captors, from [the] officers of [the] Custom house at St. Kitts. [The] cause is different [from] any determined—if not a continuity of voyage, a continuity of persons, same Master,—owner now supercargo. [The] Court has a right to be satisfied whether [the voyage was] directly continued and [the cargo was imported] merely into America colorably. No correspondence or evidence [has been] sent over, though [the] capture [was] so long ago. Instructions may not tell [the] whole of [the] case, [which is] very full of suspicion. Order farther proof [as to] property generally."

Lastly, in Nicholl's notes on appeals, the decision of the Court of Appeal in the case of the *Wilhelmina* (Otto),[2] is thus recorded.

"The question [which had long been reserved] was directed to be specially argued, whether a Neutral could trade from the Colony of the Enemy to the Port of a Country to which he did not belong. The hearing was attended by a full Board—the Lord Chancellor, Lord Hawkesbury, etc., etc. The Judgement was given by the Chancellor (see full note), and it was held, that by the general Law of Nations Neutrals cannot trade to a Colony from which they are excluded in time of Peace, and that His Majesty's Instructions had not relaxed the Rule to the extent of the present case."

It may be added that the contents of the fifteen packages, which on examination proved to be distributed with little regard to either chronology or subject matter, have been rearranged with the kind permission and help of officers of the Public Record Office so as to make consultation of particular documents fairly easy. They have also been re-catalogued in greater detail in the "H. C. A." index. But to make the collection useful not only to students on the spot but to others who, perhaps in America, would be glad to know what materials for their particular studies may be available, a general calendar, covering both sets of records, and indicating not only names of ships and masters but the general nature of each case, would appear essential. Such a calendar, it is hoped, may presently be made.

[1] Marriott is presumably here accepting Scott's contention that evidence "in exoneration of self" is not credible.

[2] November 26, 1801.

THE POSITION OF SWITZERLAND IN THE LEAGUE OF NATIONS

By R. B. MOWAT, M.A.,
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The first article of the Covenant of the League of Nations defines as original members those States which were named in the Annex to the Covenant, and also those other States which, having been "invited" in the Annex, should accede without reservation to the Covenant. Such invited States had to accede by declaration deposited with the Secretariat of the League within two months of the coming into force of the Covenant. Any State which was not named or invited in the Annex could only become a member of the League by the vote of two-thirds of the Assembly.

There was thus a real advantage in being or becoming an original member of the League, because no discussion or vote in the Assembly was required for this. There was also a certain prestige in the position of an original member. Switzerland was one of the States invited to become an original member. In a Message of the Swiss Federal Council to the Swiss Federal Assembly, February 17, 1920, note was taken of "the benefits, both moral and material, but above all moral, which attach to the status of an original member of the League."

Nevertheless, in spite of her desire to be a member, the path of Switzerland was beset with difficulties in her way to enter the League. Article 10 of the Covenant binds all members to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League, and Article 16 takes note of certain circumstances under which one member shall automatically be deemed to have committed an act of war against all other members of the League. But Switzerland, by an international Act signed at Paris on November 20, 1815, was acknowledged to be perpetually neutral, and this was confirmed by Article 435 of the Treaty of Versailles.

She could not, however, maintain her international status of a Neutral State and yet be a member of the League of Nations, consistently with Articles 10 and 16 of the Covenant. One way out of the difficulty would have been to abolish Swiss neutral status, just as Belgian neutral status was suppressed by Article 31 of the Treaty of Versailles. But the Swiss Government was determined not to abandon a status which had enabled it to play a humanitarian rôle amid all the wars of Europe since 1815. The essential parts of Swiss neutrality are defined thus: (1) Switzerland cannot participate in any war; (2) her territory is inviolable; (3) she cannot allow even the passage of troops through her territory.[1]

Another difficulty of Switzerland with regard to entering the League as an original member was the time-limit. The spirit of the Swiss Constitution, if not its literal text,[2] was deemed to require that the question of Switzerland's entry into the League of Nations should be submitted to a popular vote. It was found impossible to organise such a referendum, with the necessary "intense and prolonged propaganda," within the time-limit allowed by Article 1 of the Covenant.

Finally, the Swiss Government felt uncertain about the juridical existence of the League, so long as the United States of America was not a member. The Council of the League was declared by Article 4 of the Covenant to consist of Representatives of the Principal Allied and Associated Powers. Therefore, as the Swiss Government explained later, "no one could fail to notice that the absence of the United States constitutes an important fact, in its juridical as well as in its political aspect."[3] Moreover, the Swiss had settled the question for themselves by a Federal Resolution of November 21, 1919, which declared that Switzerland's accession to the League of Nations would only be submitted to the vote of the people and cantons (*i. e.* to the referendum) when all the five Great Powers had adhered to the Covenant.

[1] Message of Swiss Federal Council, February 17, 1920.

[2] Any revision of the Swiss Federal Constitution requires to be submitted to a popular vote. On March 5, 1920, the Swiss Federal Chamber decided that this condition was applicable to the approval of Conventions relative to the League of Nations. Since then an amendment (January 30, 1921) to the Constitution stipulates that "any international treaty concluded for an indefinite time or for more than fifteen years is subject to approval or disapproval by the people, if this vote is required by 30,000 citizens or by eight cantons."

[3] Message of Swiss Federal Council, February 17, 1920.

There were thus three difficulties in the way of Switzerland becoming an original member of the League of Nations. These difficulties were: (1) her neutrality, (2) the time-limit for accession, (3) the Federal Resolution against acceding before the United States should have acceded (this last was called the "American Clause").

In February 1920 Swiss delegates went to London and put their case before the Council of the League of Nations. M. Ador explained the Swiss point of view to the Council on February 11. On the 13th the reply of the Council was delivered in writing. This reply amounted to a very frank and generous acquiescence in the Swiss point of view. The Council began by affirming that the concept of neutrality of members of the League of Nations was incompatible with the principle of the League. It then went on to state that—

"Switzerland is in a unique situation, caused by a tradition of several centuries which has been explicitly incorporated into international law."

Accordingly the Council of the League declared that Switzerland—

"shall not be forced to participate in a military action or to permit the passage of foreign troops or the preparation of military enterprises upon her territory."

On the other hand, the Council took cognisance of declarations of the Swiss Government that—

"Switzerland recognises and proclaims the duties of joint liability which devolve upon her from the fact that she is a member of the League of Nations, including the duty of participating in the commercial and financial measures demanded by the League of Nations against a State which violates the Covenant: . . . [she] is ready for every sacrifice to defend her own territory herself in all circumstances, even during an action undertaken by the League of Nations."

The statement of the League Council to the effect that Switzerland is in a "unique situation" was meant to guard against the special status, which was to be conceded to her in the League, being claimed as a precedent in favour of other members who desired not to participate in the League's military enterprises.

Regarding the difficulty of the time-limit for accession, the Council of the League showed itself as accommodating as it had been with regard to Swiss neutrality. Although Article 1 of the Covenant stipulated that a State must accede within two months

and *without reservation*, the Council, "being mindful of the altogether unique constitution of the Swiss Confederation," now undertook to be satisfied with a notification of accession made by the Swiss Government within two months from the date of the coming into effect of the Covenant (*i. e.* January 10, 1920), "on condition that the confirmation of this declaration by the people and the Swiss cantons be effected in the shortest time possible."

In return for these ample concessions, the Swiss Federal Council on February 17, 1920, proposed that the Federal Assembly should confirm their provisional accession to the League (made on November 21, 1919), but with the suppression of the "American Clause," *i. e.* of the condition that this resolution should only be submitted to the vote of the people and cantons when all the five Great Powers had adhered to the Covenant. This being satisfactorily arranged, the referendum was taken on May 16, 1920, with the result that Switzerland's adherence to the League was ratified. Thus Switzerland has the unique position of being a permanently neutral member within the League. This neutrality, however, extends only to the territory of the Swiss State: the special status of the zone of Upper Savoy (France) which was included in the Swiss neutrality by the Congress of Vienna was abolished by Article 435 of the Treaty of Versailles.

Even yet, however, the position of Switzerland in the League of Nations is not quite so precise as that of the other members. According to the Swiss Constitution, as recently amended, amendments to the Covenant of the League, if they are to bind Switzerland, must be submitted to ratification by the people, if a vote is demanded by 30,000 citizens or by eight cantons. If this popular right to ratify or to refuse to ratify amendments to the Covenant is asserted, the Swiss Government may find itself faced with the prospect of exclusion from the League, to the great detriment both of the League and of Switzerland. According to Article 26 of the Covenant, amendments take effect when ratified by the members of the League whose representatives compose the Council, and by a majority of the members of the League whose representatives compose the Assembly. Such amendments do not bind any member of the League which signifies its dissent therefrom, but in that case it shall cease to be a member of the League. In order, partially at least, to meet

this difficulty with regard to Switzerland, it has been suggested by Professor Borel of Geneva, that—

" the Swiss Authorities will do well in each case to defer the popular vote, if it is to take place, until it is known whether the amendment in question has or has not obtained the ratification of a sufficient number of States. In the latter case, the Swiss people may reject the amendment without any consequence as to Switzerland's place in the League. But if it is already sure that the amendment will take effect, then the people will have to know that their negative vote may lead to the loss of membership for their country." [1]

[1] Lecture delivered on November 6, 1922, at the London School of Economics on " The Position of Switzerland in International Law."

THE PROTECTION OF MINORITIES

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I.—Introductory.

International law is essentially a law binding between States in their mutual relations. It takes their territorial organisation for granted, within the limits of the recognised rules of State succession. Thus, if at the conclusion of a war the vanquished party cede a portion of its territory to the victor, and such cession be duly recognised, or, at least, not contested, by the other members of the family of nations, there can be no doubt but that the treaty of cession gives a valid title to the territory in question *jure gentium*. Changes of frontier, whether made with or without special conditions, are determined by policy, not law. But their recognition in due form makes them legally binding. Stability in this respect is, in fact, an indispensable condition of the due observance of the rules of law, for without it, mutual intercourse between States, which has rightly been regarded as the very foundation of the law of nations, would be impossible.

A moment's thought, however, will show that stability on the basis of a given territorial arrangement will be illusory unless the arrangement in question contains within itself the conditions necessary thereto. In a justly celebrated passage, Vattel, inspired in this as in so many other respects by the Liberal sentiments of his age, endeavours to give the sanction of law to a determinate course of action prescribed by the dictates of an enlightened policy. Regarding the State as a community of individuals rather than as a mere *patrimonium* of the sovereign, he comes to the conclusion that although a nation (*i. e.* State) may lawfully abandon a town or province forming part of it in a case of extreme necessity, such cession, binding upon the State itself, does not affect the rights of those who are thus cut off.

"The province or town thus abandoned by and cut off from the State is not bound to accept the new master thus imposed upon it. Once separated from the Society of which it was a member, it re-enters upon its original rights, and if it is strong enough to defend its liberty it may lawfully resist the sovereign who claims authority over it."

He adds, however :

"It is true that resistance can rarely be made on such occasions, and ordinarily the wisest course is to submit to the new master upon the best terms that can be obtained." [1]

We see here a tentative formulation of the doctrine that territorial readjustments should only be made with the consent of those who will be most affected thereby. It is true that Vattel realised the difficulties in the way of its application in practice and, consequently, did not proceed very far in this direction. Nevertheless this enunciation, in embryo as it were, of the validity of the principle of government with the consent of the governed in the domain of the public law of nations is not without significance. At a later date the advocates of the doctrine of nationality were to find in the Liberal tradition of the eighteenth century a most powerful auxiliary.

At the Congress of Vienna but little attention was paid to this principle, though Castlereagh, at least, realised that the security of the dynasties and the well-being of their subjects could not be achieved simply by the creation of large territorial agglomerations. In a truly prophetic passage he described the fatuity of a policy of denationalisation in the case of the Poles :

"Experience has proved, that it is not by counteracting all their habits and usages as a people, that either the happiness of the Poles, or the peace of that important portion of Europe, can be preserved. A fruitless attempt, too long persevered in by institutions foreign to their manners and sentiments, to make them forget their existence and even language as a people, has been sufficiently tried and failed. It has only tended to excite a sentiment of discontent and self-degradation and can never operate otherwise, than to provoke commotion, and to awaken them to a recollection of past misfortunes. The undersigned, for these reasons . . . ardently desires, that the illustrious Monarchs to whom the destinies of the Polish Nation are confided, may be induced before they depart from Vienna, to take an engagement with each other, to treat as Poles, under whatever form of political institution they may think fit to govern them, the portions of that Nation that may be placed under their respective Sovereignties." [2]

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[1] Vattel : *Le Droit des Gens*, Book I. ch. xxi. Sec. 264.

[2] Note appended to Despatch No. 52 : Castlereagh to Liverpool : January 11, 1815. F.O. Cont. 10. (Quoted Webster : *British Diplomacy*, p. 287.)

In the covering despatch to Liverpool he further adds :

" I am convinced that the only hope of tranquillity now in Poland and especially of preserving to Austria and Prussia their portions of that Kingdom, is for the two latter States to adopt a Polish system of administration as a defence against the inroads of the Russian policy."

Austria, Russia and Prussia all sent formal answers agreeing with the sentiments of the note, but took care not to commit themselves to any specific point. For our present purpose, this proposal of Castlereagh's is interesting as marking the first, and the last, " engagement," though that a very loose and, as the future was to show, a very illusory one, between Great Powers which recognised the special claims of national minorities within their respective States.

In certain cases at this period, territorial cessions were made subject to the safeguarding of specified cultural rights to the inhabitants of the ceded territories (cf. the cession of a part of Savoy to the canton of Geneva; and of Genoa to Piedmont). In the case of the United Netherlands, which was a direct creation of the Powers, Belgium was handed over to the House of Orange subject to conditions drawn up by representatives of the Allied Powers embodied in a document known as the Eight Articles (June 20, 1814).[1] The following extracts from this first " Minority Treaty " must suffice here :

Art. 2. " There shall be no change in those articles of the Fundamental Law which assure to all religious cults equal protection and privileges, and guarantee the admissibility of all citizens, whatever be their religious creed, to public offices and dignities.

Art. 3. " The Belgian Provinces shall be in a fitting manner represented in the States General, whose sittings, in time of peace, shall be held by turns in a Dutch and a Belgian town.

Art. 4. " All the inhabitants of the Netherlands thus having equal constitutional rights, they shall have equal claim to all commercial and other rights of which their circumstances allow, without any hindrance or obstruction being imposed on any to the profit of others."

This Treaty is in effect the acceptance by the King of the Netherlands of the principle of religious equality and of equal commercial opportunity for all his citizens; the equality of the French and Belgian languages in the administration is not even mentioned. It thus differs considerably from the proposals made by Castlereagh in respect of the Poles, as in that

[1] Text quoted in *The Cambridge Modern History*, Vol. X. pp. 519-20.

case he advocated a separate administration on a national or semi-national basis. But the two cases have nevertheless something in common. In so far as he was sincere, Castlereagh appeared as champion of the Poles not because he was in any way attached to the Liberal philosophy of Vattel or of Sir James Mackintosh, and still less as a sympathiser with a conception of nationality that had not as yet come to the fore, but solely in the interests of tranquillity. In both cases the idea of a limitation by international agreement of the full theoretic rights enjoyed by a sovereign in virtue of his *imperium* is based in origin on considerations of expediency.

For the next instances of international solicitude on behalf of religious minorities we must turn to the Near East. With the gradual break-up of the Turkish Empire new States came into being as representatives of nationalities whose existence was in many cases quite unsuspected in Western Europe. The success of the Greek revolt marks the first, albeit only a partial, assertion of the right of the national group to independent statehood—a right proclaimed by a somewhat nebulous Liberalism, though never, of course, recognised as such at international law, the science of the *fait accompli*. In South-Eastern as in Central Europe, however, the territorial distribution of the various peoples is hardly ever such as would allow a clear demarcation of frontier between them. Of necessity, therefore, the new " national " State, in 1830 as in 1918, contained many strangers within its gates, and these minorities were in many cases of considerable importance. Considerations of policy combined with the dictates of humanity to compel the Great Powers to demand guarantees for the future of these people, and the necessary opportunity was in each case provided by the need for *de jure* recognition on the part of the new State. This was, therefore, made conditional upon the acceptance by the latter of certain obligations limiting the free exercise of its sovereignty over certain of its subjects. The Kingdom of Greece was in a sense the creation of Great Britain, France and Russia, and these three Powers embodied the following paragraph in the protocol signed by them on February 3, 1830 :

" The plenipotentiaries of the three Allied Courts being desirous, moreover, of giving to Greece a new proof of the benevolent anxiety of their Sovereigns respecting it, and of preserving that country from the calamities which the rivalry of the religions therein professed might excite, agreed that all the

subjects of the new State, whatever may be their religion, shall be admissible to all public employments, functions and honours, and be treated on the footing of a perfect equality, without regard to difference of creed, in all their relations, religious, civil or political."

The nature of conditional recognition appears in a more normal form in the Final Act of the Congress of Berlin, 1878, at which Roumania, Serbia and Montenegro were recognised as independent States. The following provisions relating to Roumania were identical with those applying to the other two countries, as well as to Bulgaria, which was recognised as autonomous :

Art. XLIII. " The High Contracting Parties recognise the independence of Roumania subject to the conditions set forth in the two following Articles.

Art. XLIV. " In Roumania the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employment, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever.

" The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to the Roumanian State, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organisation of the different communions or to their relations with their spiritual chiefs.

" The subjects and citizens of all the Powers, traders or others, shall be treated in Roumania, without distinction of creed, on a footing of perfect equality."

We may add that Article XLIV remained practically a dead letter as far as the Roumanian Jews were concerned, despite the fact that it had been drawn up primarily in their interest. Jews born in Roumania did not acquire Roumanian nationality automatically; indeed a special law was necessary in each individual case before they could become Roumanian subjects, and this was an expensive and difficult process.

Recognition once accorded cannot be withdrawn and these Treaties provided no machinery by which the actual application of the minority provisions could be controlled. Of course the State thus recognised had accepted the conditions and was under a legal obligation to carry them out. In the event of non-fulfilment, however, the only remedy lay in intervention by one or more of the other signatories.[1] Had the Concert of Europe really been effective, this would have been relatively easy to accomplish. In fact, however, relations between all

[1] Oppenheim : *International Law*, 3rd ed., Vol. I. p. 136.

the Powers concerned can hardly be said to have been cordial at any time between 1878 and the outbreak of the World War. Accordingly, collective intervention was out of the question, and it can readily be imagined with what suspicion the intervention of one of the Powers on behalf of an oppressed Balkan Jew would have been regarded by the others. In a word, the Great Powers were too busy with questions directly affecting their own interests to be able to devote much attention to religious minorities.

Of course several Powers, and above all Russia, professed a lively interest in the welfare of the Christian subjects of the Porte, but the history of Russian interventions on their behalf, and the special position she had acquired by the Treaty of Kutchuk-Kainardji in 1774, and succeeded in maintaining in large measure down to 1856, together with the sporadic efforts made by France in Syria, need not detain us here. The Sultan, in an international document, had announced his intention, both in 1856 and again in 1878, of maintaining the principle of religious liberty, but this was merely a "spontaneous declaration" on his part, and gave the Powers no right to intervene in the internal administration of Turkey. After 1878 Russia's interest in the Christian subjects of the Sultan certainly grew no less, but this chapter in diplomatic history throws no fresh light on the legal question with which we are here concerned.

During the World War the doctrine of nationality gained ground enormously, and President Wilson's enunciation of his famous "Fourteen Points" on January 8, 1918, promised a rearrangement of the map in partial accordance at least with this principle. "Certain events of the utmost importance" led to a modification of Point X, which had demanded for the peoples of Austria-Hungary merely "the freest opportunity of autonomous development," and on October 18, 1918, President Wilson declared that—

> "they, and not he, should be the judges of what action on the part of the Austro-Hungarian Government would satisfy their aspirations and their conception of their rights and destiny as members of the family of nations."

When the delegates met at Paris in 1919, therefore, they were faced with the apparently simple task of redrawing the map of Central Europe in accordance with the wishes of the inhabitants. But these peoples were inextricably mixed. Ger-

mans and Czechs combined to make a patchwork of the ethnographical map of Bohemia, while Magyars mingled with Slovaks and with Transylvanian Roumanians in varying proportions. Roumanians and Serbs both laid claim to the Banat on ethnic grounds, with the Saxons, who, in this outpost of their race, could not hope for union with the Fatherland, which was hundreds of miles away, as interested neutral onlookers.

Even assuming that rough frontiers might be drawn on purely ethnic lines, there nevertheless remained the unpleasant fact that the new States must be able to live, and economic considerations succeeded in making confusion worse confounded. The industries and the mines of German North Bohemia, for instance, were both essential to the new Czecho-Slovakia, which also needed a port on the Danube, now an international river for practically the whole of its navigable course. Again, Poland had been promised an outlet to the sea, and this could only be acquired at the expense of German-speaking districts. However the frontiers were drawn, therefore, there would still remain national minorities on both sides.

The responsibilities of the Allied Powers were clear enough. They had called new States into existence, in accordance with the principle of nationality, but the application of this principle led inevitably to its violation. Something had to be done for the violated minorities both in the interests of the sacred doctrine itself and in order to impart something of stability to the new settlement. Policy and principle went hand in hand. Fortunately the precedent of the old treaty clauses protecting religious minorities in the Balkans was available, and its extension to minorities of race and language, with some elaboration and with the establishment of an international machinery to guarantee its efficacy in practice, seemed to promise a satisfactory way out of the *impasse*.

II.—The Minority Treaties of 1919.

Prior to 1919 the obligation to protect minorities, and even minorities of religion only, had been imposed solely in the case of new States seeking recognition. Moreover, with the single exception of Belgium, which was a rather special case, the principle had only been applied in the new countries of the Balkans, where cultural conditions were very primitive when

judged by Western standards. Thus even Turkey escaped in 1856 and again in 1878, as we have seen above, while no attempt was made to enforce the principle when the Kingdom of Italy and the German Empire were recognised by the Powers.

The effect of these clauses on the sovereignty of the States concerned will be considered later; it will suffice here to point out that the obligations themselves were regarded as being very humiliating, implying as they did the existence of a lower standard of civilisation in the States accepting them. It is not surprising, therefore, that this principle, when extended to minorities of race and language, and applied to countries of advanced civilisation, such as Czecho-Slovakia and Poland, met with a very hostile reception at Paris from the States concerned. Whereas German minorities in the new Slav States were accorded protection, the principle did not apply to the Slav minorities (such as the Lusatian Serbs) in Germany. Moreover, the principal Allied Powers had minority problems of their own (such as Ireland, Egypt and Alsace), but these were carefully excluded from the discussion and treated as matters of internal interest only. As Central Europeans are extremely sensitive on this minority question, it is not to be wondered at that there was, and still is, much comment on what is regarded as the hypocrisy of the Great Powers. From the legal point of view, however, there is no inconsistency, for, as we have already pointed out, the right to protection does not exist at international law in the absence of treaty agreements, while treaty stipulations of this kind are a question of policy, not of law. It follows that it would not have been in accordance with precedent to comply with the request of the Czecho-Slovak Delegation to the Peace Conference and impose these obligations on the German Reich; but, at the same time, it was of the greatest importance that the minority arrangements with the new States should be completed before their territorial possessions were recognised by the Powers. As Poland would be the only one of the new States to benefit considerably from the Treaty with Germany, it was imperative that this question should be regulated before the Treaty itself was signed. Hence the Polish minorities were first dealt with, and the settlement arrived at formed the prototype of the other Minority Treaties.

The question came before the Supreme Council in April,

1919, and was referred to a special Minorities Committee.[1] In May, the provisions decided on for the new States of Poland and Czecho-Slovakia were extended to those old States in South-Eastern Europe which were to receive such large extensions of territory as to become to all intents and purposes new States—viz. Serbia, Roumania and Greece. This appeared at first sight as a violation of the precedent to which we have had occasion to refer more than once, and at the Plenary Session of May 29th, which dealt with the Austrian Treaty, a strong opposition on the part of the smaller States was led by M. Ion Bratiano, the Roumanian Premier, against what appeared to him as a violation of the sovereign rights of his country. The following extracts from President Wilson's speech of May 31st deal effectively with this criticism from the political point of view [2] :

" We are trying to make a peaceful settlement, that is to say, to eliminate those elements of disturbance, so far as possible, which may interfere with the peace of the world, and we are trying to make an equitable distribution of territories according to the race, the ethnographical character of the people inhabiting those territories.

" And back of that lies this fundamentally important fact, that when the decisions are made, the allied and associated powers guarantee to maintain them. It is perfectly evident, upon a moment's reflection, that the chief burden of their maintenance will fall upon the greater powers. The chief burden of the war fell upon the greater powers, and if it had not been for their action, their military action, we would not be here to settle these questions. . . .

" In those circumstances is it unreasonable and unjust that not as dictators but as friends the great powers should say to their associates : ' We cannot afford to guarantee territorial settlements which we do not believe to be right, and we cannot agree to leave elements of disturbance unremoved, which we believe will disturb the peace of the world ' ?

" Take the rights of minorities. Nothing, I venture to say, is more likely to disturb the peace of the world than the treatment which might, in certain circumstances, be meted out to minorities. And, therefore, if the great powers are to guarantee the peace of the world in any sense is it unjust that they should be satisfied that the proper and necessary guarantee has been given ?

" I beg our friends from Roumania and Serbia to remember that while Roumania and Serbia are ancient sovereignties, the settlements of this conference are adding greatly to their territories. You cannot in one part of the

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[1] For an account of its work and much interesting material on the minorities question at Paris see Temperley : *A History of the Peace Conference of Paris*, Vol. V. ch. ii.

[2] Quoted by Temperley, *op. cit.* Vol. V. p. 130.

transactions treat Serbia alone and in all the other parts treat the kingdom of the Serbs, the Croats and the Slovenes as a different entity, for they are seeking the recognition of this conference as a single entity, etc. . . .

"Mr. Bratiano . . . suggested that we could not, so to say, invade the sovereignty of Roumania, an ancient sovereignty, and make certain prescriptions with regard to the rights of minorities. But I beg him to observe that he is overlooking the fact that he is asking the sanction of the allied and associated powers for great additions of territory which come to Roumania by the common victory of arms, and that, therefore, we are entitled to say : 'If we agree to these additions of territory we have the right to insist upon certain guarantees of peace.'"

The Polish Treaty was signed, in a slightly amended form, on June 28th at Versailles, at the same time as the German Treaty. With Czecho-Slovakia negotiations proceeded smoothly, and the Minorities Treaty was signed on September 10th at Saint-Germain-en-Laye, at the same time as the Austrian Treaty. With Roumania and Jugo-Slavia more difficulty was experienced, but here too the smaller States eventually came into line, and Treaties were signed on December 5th. Thus, by the end of 1919, with the signature of the Treaties with Austria and Bulgaria, Minority Clauses had been accepted by six States, viz. Poland, Czecho-Slovakia, Austria, Bulgaria, Jugo-Slavia and Roumania; and a seventh was added to the list by the Treaty of Trianon with Hungary, signed on June 4, 1920.

These Treaty Clauses differ considerably in form from earlier conventions dealing with similar matters.[1] On the one hand, the provisions are much wider in scope than was previously the case, and, on the other, definite machinery is established to supervise their actual application. For our present purpose we may neglect the clauses relating to optants and other problems of nationality, of great though temporary importance, and consider the Minority Clauses under four main heads :

(*a*) Fundamental principles of universal application in the States concerned.

(*b*) Educational facilities for minorities at State expense, which are somewhat restricted in their application.

[1] See the admirable *Letter addressed to M. Paderewski by the President of the Conference transmitting to him the Treaty to be signed by Poland under Art. 93 of the Treaty of Peace with Germany*, June 28, 1919. Published by H.M. Stationery Office [Cmd. 223] (1919): also in Temperley : *op. cit.* Vol. V. p. 432.

(*c*) Special clauses accepted by particular States.
(*d*) Machinery established to regulate any differences that may arise in the application of the above.

The following extracts are taken from the Treaty with Poland, which was followed almost word for word in the other Treaties (for Poland read Czecho-Slovakia, etc.). The important divergences are pointed out in Sections II. and III., while we append below a concordance of these Clauses in the various Treaties with which we are here concerned, for purposes of reference.[1]

(a) *Fundamental Principles.*

Art. 1. " Poland undertakes that the stipulations contained in Articles 2 to 8 of this Chapter shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Art. 2. " Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

" All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Art. 6. " All persons born in Polish territory who are not born nationals of another State shall *ipso facto* become Polish nationals.

Art. 7. " All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

" Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

[1] Concordance of the Minority Clauses.

Treaty with	Articles							Council Resolution of
Poland . . .	1	2	6	7	8	9	12	13 Feb., 1920
Czecho-Slovakia	1	2	6	7	8	9	14	29 Nov., 1920
Jugo-Slavia .	1	2	6	7	8	9	11	29 Nov., 1920
Roumania . .	1	2	6	8	9	10	12	30 Aug., 1920
Austria . . .	62	63	65	66	67	68	69	22 Oct., 1920
Hungary . .	54	55	57	58	58	59	60	30 Aug., 1921
Bulgaria . .	49	50	52	53	54	55	57	22 Oct., 1920

The last column gives the dates at which these various minority stipulations were placed under the guarantee of the League of Nations by Resolution of the Council of the League (*v.* post : Art. 12 of Polish Treaty, p. 112).

"No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

"Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language either orally or in writing, before the Courts.

Art. 8. "Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein."

These general principles are in accordance with the most elementary ideas of justice and certainly represent a necessary condition of State life and even of State existence in racially-mixed districts. Their disregard by certain States in pre-war days is undoubtedly responsible for much of the bitterness and racial animosity which is unfortunately only too characteristic of Central Europe to-day. Their incorporation in the fundamental laws of the new States is therefore to be welcomed on grounds of policy and in the interest of future peace no less than for humanitarian reasons.

(b) *Educational Facilities at State Expense.*

The main principle, which we give below, is contained in all the Treaties, though parts of the territories of Poland and Jugo-Slavia are exempted from its application.

Art. 9. "Poland will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

"In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes."

The terms of this Article enjoin a positive duty on the part of the signatory State. Whereas the other Articles (2 to 8), which alone are recognised as fundamental laws by Poland,

Czecho-Slovakia, Jugo-Slavia and Roumania,[1] guarantee the equality [2] of all citizens before the law, without distinction as to race, language or religion, Article 9 recognises that the State is something more than any one nation which may inhabit its territory. Members of minorities pay taxes and contribute to the State Exchequer. Why, therefore, should they be refused such educational facilities as would guarantee their children against denationalisation? Have they not, moreover, an equitable claim to a due proportion of the monies provided out of public funds under the State for educational, religious or charitable purposes?

The wording of the Article itself, however, is almost inevitably somewhat vague. For administrative reasons alone the minority must be considerable before it can reasonably expect special facilities if a *reductio ad absurdum* is to be avoided. But the definition of what constitutes a "considerable proportion" might well vary under different conditions, while there does not appear at first sight to be any exact criterion as to whether facilities are "adequate" or not. Again, "towns and districts" are not immutable concepts. For instance, if administrative frontiers are drawn in one way, the proportion of people who could be classed as minorities might be "considerable"; whereas a change in the administrative areas might completely alter these proportions. Finally, it is worth pointing out that this stipulation applies only to primary schools and, even here, the study of the national (State) language may be made compulsory.

This short analysis has suggested some of the main difficulties which have already been experienced in the practical application of Article 9, and it must at once be clear that everything really depends upon the spirit in which these stipulations are carried out rather than upon the precise wording of the Article itself.

It might be contended that the terms of this Article involve

[1] In the Treaties with Austria, Hungary and Bulgaria, all the Minority Articles, and not merely those we have classed as "Fundamental Principles," are recognised as fundamental laws (see Austrian Treaty, Article 62, etc.).

[2] It is worth noting that under Article 8 minorities of race, language and religion have an "equal right to establish . . . schools." If, however, the principle of secular State education were to be proclaimed to the exclusion of voluntary (denominational) schools, we assume that the minorities would be precluded from maintaining schools, as they are not entitled to claim more than "the same treatment in law and in fact as the other Polish nationals."

a greater degree of interference in the internal affairs of the States concerned than do the more general provisions of the earlier Articles. Indeed, while the latter apply to the whole of the territories of these States, the application of Article 9 is definitely restricted, so far as Polish citizens of German speech are concerned, "to that part of Poland which was German territory on August 1, 1914," and, in the case of Jugo-Slavia, "only to territory transferred to Serbia or to the Kingdom of the Serbs, Croats and Slovenes since the 1st January, 1913." We have, therefore, to consider what principle, if any, was involved in the making of these distinctions.

The difference in the two dates is suggestive. The territorial gains of Serbia in the Balkan Wars had never been finally recognised by the Powers who, therefore, claimed to treat them on the same footing as the new acquisitions made in 1918. Old Serbia (*i. e.* Serbia prior to January 1, 1913) was included in the scope of the general statements of principle (Articles 2 to 8), both because they had in part been agreed to by her at the Congress of Berlin, and because it was imperative that this should be done in the interests of world peace. But the stipulations of Article 9 might be held not to be of such importance and could, therefore, only be enforced for the new territories for which recognition was sought. If this is the correct view, we may well wonder why there was no corresponding limitation in the Roumanian Treaty, where these stipulations apparently apply to the whole country, including the former kingdom (Article 10 in the Roumanian Treaty). In any case, President Wilson's speech, parts of which we have quoted already, reads strangely in this context :

> "You cannot in one part of the transactions treat Serbia alone and in all the other parts treat the kingdom of the Serbs, Croats and Slovenes as a different entity. . . ."

Was not this, however, exactly what the Powers had succeeded in doing?

With regard to Poland, it might be maintained that the Powers, beyond the fundamental question of guaranteeing peace in the future, had no right at the Peace Conference to make any stipulations respecting the future of territory which formerly formed part of the Russian Empire. This is, in fact, the explanation suggested by one writer for the absence of a

Minority Treaty with Finland.[1] If this is indeed the case, we may well wonder why a distinction should be made between Polish citizens of German speech and the various other Polish minorities. Perhaps the Powers felt more solicitude for the future of Yiddish than for German in the one-time Congress Kingdom.

Of course the application of this Article to Czecho-Slovakia is quite natural, as also to Austria and Hungary, if we regard these latter as new States seeking recognition. But it is difficult to see why it should apply also to the old State of Bulgaria and not to " old Serbia," while its inclusion under the heading of the " fundamental laws " in the case of the three ex-enemy countries, but not in that of the others, appears to be making an invidious, though not perhaps a very important, distinction not easily reconciled with the avowed objects of the Minority Treaties themselves.

(c) *Special Clauses accepted by Particular States.*

The position of the Jews in Eastern Europe caused some anxiety to the representatives of the Powers, and special Articles were forced upon Poland and Roumania, who were thought to be the most likely offenders (Hungary, where Jew-baiting has since become almost a profession, did not achieve this distinction !) for their special protection. Article 10 of the Polish Treaty provides for the establishment of " Educational Committees appointed locally by the Jewish communities of Poland " to " provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with Article 9," subject, however, " to the general control of the State." Further, the special claims of the Jews to freedom from anything which might lead them to violate the Sabbath are met by Article 11. The long-standing disabilities of the Jews which resulted from the Roumanian Naturalisation Law, to which we have already referred, were finally overcome by Article 7 of the Roumanian Treaty :

" Roumania undertakes to recognise as Roumanian nationals *ipso facto* and without the requirement of any formality Jews inhabiting any Roumanian territory, who do not possess another nationality."

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[1] Temperley : *op. cit.* Vol. V. p. 126, note.

It may be added also that the terms of Article 6 in the Polish and other Treaties, which we have given already, were designed above all for the protection of the Jews.

By the acquisition of Transylvania and the Banat, large and fairly compact groups of Saxons and a very considerable "language island" of Szecklers (a people of Magyar speech living in the Carpathians) came under Roumanian sovereignty. To meet these somewhat special cases Roumania agreed to the following Article (No. 11):

> "Roumania agrees to accord to the communities of the Saxons and Szecklers in Transylvania local autonomy in regard to scholastic and religious matters, subject to the control of the Roumanian State."

Finally, the Bulgarian Treaty (Article 56) provides the solitary instance of a clause relating to the voluntary emigration of racial minorities, which was followed up, on September 9, 1920, by a Convention between Bulgaria and Greece respecting reciprocal emigration. It appears to the present writer that in many other cases this solution of the minority question may well be deserving of more consideration than it has hitherto received.

The Clauses we have considered so far form a natural extension of the general principles enunciated with regard to the rights of minorities which were developed during the course of the last century. In one respect, however, a deliberate innovation was made which provides for a separate administration of the Ruthene territory of Czecho-Slovakia. This part of the Treaty settlement reminds one more of the suggestions tentatively made by Lord Castlereagh with regard to the Polish question in 1815 than of the Minority Clauses proper. In some ways, indeed, Czecho-Slovakia's position in this territory is not unlike that of a rather special kind of mandatory.

The reasons governing the choice of this expedient are not far to seek. The territory in question had to be dealt with somehow at Paris. If it had remained part of Hungary the old policy of Magyarisation, which had here assumed a somewhat offensive form, would almost certainly have been continued. To create another independent State would have been undesirable, particularly as Sub-Carpathian Ruthenia is quite a small territory, and would, further, have been practically impossible in view of the fact that about eighty-five per cent. of the population is illiterate, while the professional classes, such as they are,

are almost exclusively of Magyar speech. Moreover, a reunion with the rest of the Ruthene (or Ukrainian) peoples did not seem possible in 1919 on account of the extreme uncertainty of the general position in Russia. Thus, although there are practically no people in this district of Czecho-Slovak speech, it was nevertheless decided to hand it over to the new Czecho-Slovak Republic, though under the rather special provisions which follow :

Art. 10. " Czecho-Slovakia undertakes to constitute the Ruthene territory south of the Carpathians within frontiers delimited by the Principal Allied and Associated Powers as an autonomous unit within the Czecho-Slovak State, and to accord to it the fullest degree of self-government compatible with the unity of the Czecho-Slovak State.

Art. 11. " The Ruthene territory south of the Carpathians shall possess a special Diet. This Diet shall have powers of legislation in all linguistic, scholastic and religious questions, in matters of local administration, and in other questions which the laws of the Czecho-Slovak State may assign to it. The Governor of the Ruthene territory shall be appointed by the President of the Czecho-Slovak Republic and shall be responsible to the Ruthene Diet.

Art. 12. " Czecho-Slovakia agrees that officials in the Ruthene territory will be chosen as far as possible from the inhabitants of this territory.

Art. 13. " Czecho-Slovakia guarantees to the Ruthene territory equitable representation in the legislative Assembly of the Czecho-Slovak Republic, to which Assembly it will send deputies elected according to the Constitution of the Czecho-Slovak Republic. These deputies will not, however, have the right of voting in the Czecho-Slovak Diet upon legislative questions of the same kind as those assigned to the Ruthene Diet."

It is unfortunately not possible here to examine these clauses in their actual operation. The territory has, however, been constituted and, thanks to the low cultural level of the inhabitants, to the prevalence of various diseases (notably typhus and cretinism), and to the appalling neglect of the old Magyar régime both in the economic and in the educational spheres, the pressing needs of reconstruction in this district, which was the scene of actual hostilities during the war, have been a heavy drain on the budget of the Republic. There is, fortunately, no time limit within which these principles must be put into operation and, in the opinion of the writer, the introduction of an autonomous régime such as is contemplated in the Treaty would, at the present time, be premature.

(d) *Machinery and Procedure to deal with the Minority Question.*

As we have already seen, one of the most significant innovations in these Treaties is the attempt to establish some form

of control over the application of these stipulations and to lay down rules of procedure for the settlement of any disputes which may arise therefrom. The following Article makes clear the extent to which this question was considered as a part of the general Treaty settlement, of which the League of Nations was regarded, by some at least of the signatories, as the central and distinguishing feature.

Art. 12. " Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

" Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

" Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government thereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

This Article is of the greatest interest and importance. Whereas previously the exact terms of the obligations entered into by the various States had been defined once and for all, in 1919 it was realised that, in order to make the protection of minorities really effective, machinery must be created for amending or modifying the original terms, should these prove inadequate for the purpose. The earlier history of the subject had shown that legal subtleties might be resorted to which would satisfy the letter but not the spirit of the various Treaty clauses, and it was indispensable that proceedings of this kind should be safeguarded against. Moreover, for fresh action on the part of the various signatory Powers unanimity had previously been necessary and political rivalries had made this very

difficult of achievement. Hence Article 12 provides that the terms of the obligations themselves may be modified by a mere majority vote of the Council of the League of Nations, thus rendering tactics of obstruction less certain of success than in former days.

While the Council of the League of Nations is not charged with the responsibility of seeing that these obligations are actually carried out—for these Treaties do not in any sense bring the new States under the tutelage of the League—it is nevertheless empowered to take such steps as may appear necessary in the event of its attention being called by one of its members to any infraction, or to any danger of infraction, of these obligations. The procedure to be followed in the first instance in such a case was left by the Treaties to the discretion of the Council of the League itself. Since 1919, however, definite rules of procedure have been adopted which take advantage of the machinery of the League. It is hardly necessary to point out that individuals as such have no *locus standi* at international law; at the same time they may obtain redress in the following manner.

Any petition by or on behalf of an aggrieved minority must be made in the first instance to the Secretariat of the League of Nations, where a special department has been set up to deal with minority questions. The complaint is referred by the Secretary-General of the League to the Government in question for comment, and then it is submitted by him, together with any comment that may have been made, to the Council of the League. It is next examined by a special Committee of the Council, composed of the President and two other members. If they consider the complaint to be well founded, they suggest suitable measures for the consideration of the full Council, which then makes representations of a friendly and semi-official character to the Government in question.[1] By these means complaints of a frivolous character can be disposed of without difficulty, while an easy method of ventilating grievances remains available. At the same time the dignity of the State concerned is interfered with as little as possible, for not only

[1] See *Verbatim Record of Third Assembly of League of Nations*, Thirteenth Plenary Meeting, speech of M. Motta, p. 5; and *Report to the Third Assembly of the League on the Work of the Council and on the Measures taken to execute the Decisions of the Assembly*, p. 46 (A. 6, 1922).

has it an early occasion of stating its case without reserve, but it is also given an opportunity of " climbing down " gracefully in case of need.

If, however, an *impasse* is reached in spite of all these precautions, the question is to be regarded as a " dispute of an international character " and therefore, in accordance with Article XIV. of the Covenant of the League, within the cognisance of the Permanent Court of International Justice. The sole respect in which this differs from other " disputes of an international character " in this connection is that the consent of both parties thereto is not necessary before the question may be referred to the Court.

This machinery for enforcing obligations undertaken in respect of minorities is in some particulars decidedly ingenious. A certain degree of control is achieved over the States concerned without this necessarily entailing any humiliation for them, while a judicial decision is only to be sought when the powers of persuasion have been exhausted.

III.—The Activities of the League of Nations.

In addition to the seven Minorities Treaties concluded at the Peace Conference, the principle has been extended through the instrumentality of the League of Nations to five other countries.[1] At the First Assembly of the League the following recommendation was adopted on December 15, 1920 :

" In the event of Albania, the Baltic and Caucasian States being admitted to the League, the Assembly requests that they should take the necessary measures to enforce the principle of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect."

In accordance with this resolution, Albania, which was admitted to the League in 1920, signed a declaration which corresponded very closely with the stipulations of the Treaties we have already examined. This was ratified by Albania on February 17, 1922, and, like the other Treaties, was placed under the guarantee of the League.

At the Second Assembly, the representatives of Esthonia, Latvia and Lithuania, prior to the admission of their respective

[1] For this section, see *Report to the Third Assembly of the League on the Work of the Council, etc.*, p. 45.

countries to the League, adopted the recommendation of the First Assembly and expressed their willingness to discuss with the Council the scope and methods of application of their international obligations for the protection of minorities. On May 12, 1922, these negotiations led to the signature by Lithuania of a declaration the terms of which were very similar to those of the Polish Treaty, but discussions with the other two States have proceeded very slowly and have not as yet been completed.

Finally, Finland accepted certain rather special conditions, which were originally drawn up by the Commission of Inquiry appointed by the League, in the case of the Aaland Islands. Not only is primary education in these Islands to be given exclusively in Swedish, but the teaching of the Finnish language cannot even be made obligatory, save with the consent of the commune concerned. Further, the inhabitants acquire a right of pre-emption in the case of any property in the Islands for which offers of purchase may be made by any person or corporation outside the Islands. The other clauses accord certain privileges in constitutional matters and the whole settlement is placed under the guarantee of the Council of the League.[1] Finland, which was admitted to membership of the League in 1920, has also submitted a memorandum containing detailed information with regard to the rights guaranteed to minorities by the Finnish Constitution, and note was taken of this information by the Council of the League in October, 1921. It would appear that, although Finland has not made a legal declaration to the League on this question, she is, nevertheless, under a moral obligation to respect the principle of the Protection of Minorities.

There remains one further case to be considered which is, in many respects, of the greatest importance. When Upper Silesia was divided between Germany and Poland, negotiations were instituted between the two countries with a view to an agreement being reached as to the régime to be adopted in their respective territories of the province which were closely interdependent. These resulted in the Germano-Polish Convention, which was signed at Geneva on May 15, 1922, not the least important section of which is that dealing with the Protection of Minorities.[2]

[1] See *Monthly Summary of the League of Nations*, Vol. I. pp. 40–42.

[2] *Convention Germano-Polonaise relative à la Haute Silésie.* Troisièmie Partie: Articles 64–158.

The Conference of Ambassadors had decided on October 20, 1921, (1) that the Minorities Treaty signed by Poland (June 28, 1919) was to be applicable to that part of Upper Silesia definitely incorporated in Poland, (2) that equity and the economic needs of Upper Silesia alike made it necessary that similar provisions should be accepted by Germany (at any rate for the transitional period of fifteen years) in respect of that part of Upper Silesia definitely incorporated in the Reich, and (3) that an agreement of this nature between Germany and Poland should constitute an obligation of international interest and be placed under the guarantee of the League of Nations. In accordance with these decisions, therefore, the minorities provisions of the Polish Treaty (Articles 1 and 2 and 7 to 12) were included almost without alteration in the Germano-Polish Convention.

But these articles represented only a bare minimum and, in order to pave the way for peace and understanding in the future, further clauses were agreed upon for the provisional period of fifteen years on the basis of an equitable reciprocity. The conditions of the settlement were certainly somewhat special, but the further extension of the stipulations and machinery of the original minorities provisions and the general interpretation thereof which they represent are not without interest to the student of the subject, and might well serve as a model in other cases where this vexed question only admits of a satisfactory solution on a reciprocal basis. For these reasons we give a short summary of the main provisions of this part of the Convention.

No language test may be imposed as a qualification for voters in Upper Silesia, nor may the right of any individual, being a member of a minority, to import publications from abroad be in any way interfered with. All inhabitants of the plebiscite zone are entitled to the protection of the State, whether they are its nationals or not. Religious bodies are to be allowed (with certain necessary reservations) to appoint their own leaders without interference on the part of the Government; while any priests or medical men, who may be needed by institutions maintained by a minority, are to be allowed to come from the territory of the other Power and their professional status must be duly recognised.

The right to maintain private educational establishments is interpreted in a comprehensive manner, and teachers in such schools are to enjoy full freedom, provided they are properly

qualified (the official diploma in either country being sufficient for this purpose) and provided, further, that they do not adopt an attitude hostile to the State.

In school districts where the parents or guardians of at least forty children so demand, special primary schools are to be established by the State for the minority. These are to be controlled, in part at least, by School Boards, more than half of whose members must be elected by the parents concerned. Similar facilities are created for the establishment, in any district where official secondary schools exist, of secondary schools for minorities of language or religion on the demand of the parents or guardians of at least three hundred children. Duly qualified secondary teachers are to be allowed to come from the other country for the purpose, without this entailing the loss of their original citizenship. Finally, instruction in all schools in both areas is to be so organised as to prevent any disparagement of the national and cultural qualities of either nation in the eyes of the pupils.

In practically all dealings with the administrative and judicial authorities either language may be used. If replies are sent by the administration in the official language, a translation must be appended if asked for. In the courts of law, official proceedings are normally to be carried out in the official language, without prejudice to the right of any individual to use either language, though this latter privilege is denied to lawyers in their professional capacity. Should the tribunal so decide, however, the proceedings in an ordinary court may be carried on in the language of the minority when necessary.

This short summary will suffice to indicate the manner in which " adequate facilities " have been provided in towns and districts in Upper Silesia where a " considerable proportion " of the inhabitants are members of a minority. The Convention, further, provides special machinery for dealing with petitions arising out of any alleged non-compliance with its stipulations without prejudice, however, to the general right to petition the Council of the League of Nations which is provided by all the Minorities Treaties.

If no satisfaction can be obtained from the highest competent administrative authority, a petition may be lodged with a special Minority Office, which is established by both Governments in their respective territories. Should this institution

prove unable to deal with the petition in a satisfactory manner, it is referred to the President of the Mixed Commission established at Katowice in accordance with Article 562 of the Convention. In the last instance recourse may still be had to the Council of the League through the intermediary of the competent Minority Office.

It was hoped by these means to deal with minority questions in a manner at once more expeditious and less humiliating to the Governments concerned than would be possible under the general procedure applying in other cases, while the possible demands on the time and attention of the Special Committee of the Council of the League are greatly diminished. Moreover, the rights of the minorities are defined in more detail and in more exact phraseology in the Convention than in any of the other Minorities Treaties. The President of the Mixed Commission is a neutral nominated by the Council of the League (Article 564) and is likely to be at once impartial and relatively well informed as to local conditions. In this manner the minorities question in Upper Silesia appears to have been successfully localised. It is impossible to predict, however, whether this settlement is likely to survive the provisional régime, which terminates in 1937. It may, in fact, prove to be nothing more than an interesting episode in the history of the Protection of Minorities.

Petitions submitted to the Council of the League of Nations.— A dispute between Poland and Austria regarding the Jews, who had come from Eastern Galicia into Austria and who were threatened with expulsion by the latter, was settled by the intervention of the Council of the League of Nations, which succeeded in obtaining the necessary guarantees for these Jews on the part of both Governments. Again, intervention on the question of the emigration of the Bulgarian minorities from Greece to Bulgaria [1] was undertaken by the Council of the League to the satisfaction of both parties.

In accordance with the new procedure which we have already outlined, the Special Committee of the Council has dealt with the following petitions [2] :

[1] See Article 56 of the Treaty of Neuilly, November 27, 1919.

[2] See *Report to the Third Assembly of the League*, pp. 47–49. The Bromberg question was dealt with in the first instance by a specially rapid procedure which is available when immediate action is called for.

(1) Petition (November 9, 1921) from the Germanic League of Bromberg (Poland) in respect of the threatened expropriation of several thousand German farmers.

(The question is still under consideration, but the execution of the actual expropriation has been stayed by the Polish Government at the request of the Council until it has had an opportunity of taking a decision.)

(2) Petition from the "Political Party of the Hungarian Ruthenes" alleging the non-fulfilment of its obligations on the part of the Czecho-Slovak Government.

(Examined by Committee of Council on January 14, 1922; no action recommended.)

(3) Petition of the "Czecho-Slovak National Council in Vienna" concerning school instruction for Czecho-Slovak minorities in Austria.

(Considered by Committee of Council on March 26, 1922; no action recommended.)

(4) Petition concerning the right of option for Jews from the former Austro-Hungarian Empire.

(Considered by Committee of Council on March 26, 1922; no action recommended.)

(5) Petition concerning position of Russian Minorities in Bessarabia.

(Considered by Committee of Council on March 26, 1922; no action recommended.)

At the present time a petition regarding the Jewish minority in Hungary is also being considered by the Special Committee of the Council.

It is a significant fact that in four of these cases no member of the Special Committee has seen fit to recommend that the petition be placed upon the agenda of the Council. In the case of the Bromberg petition, however, the action of the Council has certainly been beneficial, while it seems probable that the question will be decided ultimately by reference to the Permanent Court of International Justice.

IV.—Conclusion.

It is, unfortunately, impossible within the limits of this article to attempt any independent criticism of the actual operation of the Minorities Clauses in the various countries which have accepted them. The conclusions of nearly all observers, however, as well as the decisions in most of the petitions to which we have referred, tend to point in one direction. At the Peace Conference too much stress was laid on the rights of minorities and too little attention paid to their corresponding

duties. It is preposterous to demand of an independent State that it respect the institutions of a section of its nationals if those institutions are themselves centres of treasonable activities directed against the very existence of the State. Thus many Magyar religious and scholastic organisations in Transylvania and elsewhere serve as *foyers* of irredentism, though howls of indignation are raised in the name of religious and cultural freedom when the State concerned takes steps to guarantee its own existence against treasonable propaganda of this kind. Members of minorities cannot expect to benefit by the stipulations in their favour contained in these Treaties unless they themselves acknowledge the territorial clauses which are the basis of the whole Treaty settlement. A few years' observation of the actual operation of the Minorities Clauses has made this clearer than it seems to have been in the minds of the originators of the Treaties, and it is significant that a resolution was adopted by the Third Assembly of the League of Nations in this sense.

> "While the Assembly recognises the primary right of the minorities to be protected by the League from oppression, it also emphasises the duty incumbent upon persons belonging to racial, religious or linguistic minorities to co-operate as loyal fellow-citizens with the nations to which they now belong."

This text is almost identical with the draft resolution submitted by Professor Gilbert Murray, the South African delegate, to the Sixth Committee of the Assembly which reported on the whole question.[1]

Professor Murray had also proposed that the League should appoint resident agents in some localities of mixed population "to report impartially on the behaviour of both, or all, sections of the population." This draft resolution was not, however, approved by the Committee as a whole, in view of the large variety of possible cases and of the fact that the Council already enjoys a wide discretion in the matter. Had this resolution been adopted a very far-reaching innovation would have been made alike in the theory and in the practice of the subject. Up to the present the League machinery has existed solely as a means of deciding, in the case of petitions referred to it, whether a certain State has or has not fulfilled certain of its international obligations. Professor Murray's proposal, on the other hand, seems to envisage the initiation of the direct sur-

[1] See *Report presented to the Assembly by the Sixth Committee*, A. 83, 1922. I.

veillance by the League of certain of the areas where minority disputes are likely to arise. Not only would machinery of this kind offend the susceptibilities of the States concerned, but the " resident agents of the League " would need almost superhuman qualities of tact, patience and endurance, as otherwise their presence in the troubled areas would almost certainly precipitate more disputes than it would obviate.

In many ways it would appear, then, that the limits of general international action have already been reached in the matter. More important than the text of the clauses is the spirit in which their stipulations are translated into action, and good-will can probably best be fostered by a general supervision rather than by a too obviously direct control on the part of the League of Nations. In many districts bilateral agreements based on the Upper Silesian precedent would possibly provide the best means of dealing with the problem, for reciprocity would certainly prove more attractive to the States concerned than compulsion, however veiled.

A further resolution of the Assembly of the League is of even greater interest and provides an admirable point on which we may take leave of the subject. It, also, was originally drafted by Professor Murray and reads as follows :

" The Assembly expresses the hope that the States which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the Treaties and by the regular action of the Council."

In origin, as we have seen, the recognition of certain States was made dependent upon their undertaking to observe certain fundamental principles in their dealings with their nationals who belonged to minorities of religion or of race. Considerations of humanity and expediency alike determined this course of action on the part of the Powers. But recognition is a question of policy only and conditions could, therefore, be imposed at the discretion of the Powers according it, who regarded themselves as acting on behalf of the Concert of Europe.

At the Peace Conference of Paris, despite many declarations to the contrary, the principle of the Protection of Minorities was not applied with any degree of consistency. In certain cases it appears as the condition of recognition; in other cases,

again (as, for example, Bulgaria), it is part of the peace terms imposed by the victor on the vanquished. In view of the fact that it was applied by the Powers to Roumania throughout the whole of her territory, while Old Serbia and parts of Poland were exempted from certain of the stipulations, it is impossible to maintain that these clauses represent the consistent application of a logical principle. From the point of view of international law, however, the one relevant consideration is that, up to the present time, thirteen States have undertaken certain treaty obligations in this connection either in respect of a part or of the whole of their respective territories.

Theoretically, the sovereignty of a State is not interfered with by any treaty obligations which it freely undertakes and which do not deprive it of its independent existence. Such contracts represent, in fact, the result of the exercise by it of rights it enjoys by virtue of its sovereignty. Thus Switzerland did not cease to be a sovereign State by accepting certain far-reaching limitations of its external sovereign rights. Of course, the acceptance of restrictions on the free exercise of the rights it enjoys over its own subjects in virtue of its *imperium* may well appear as an even greater limitation of sovereignty than the signature of a treaty of neutralisation. But the distinction is one of degree rather than of kind. If we adopt the analogy of the law of property, it may perhaps be argued that the sovereign power is that which enjoys the residuum of sovereign rights which remains after abstraction of the various limitations on its sovereignty that have been accepted by it. It is, perhaps, necessary in this connection to emphasise the fact that, under the various Treaties which have been considered above, Minority Clauses may be amended by a simple majority of the Council of the League of Nations. It is clear, therefore, that the question is not treated on quite the same footing as most other really important issues, which require unanimity in accordance with Article 5 of the Covenant of the League. In view of the complexity of modern international relations and, particularly, having regard to the new order which is being evolved under the auspices of the League of Nations, it is perhaps time to review the whole doctrine of sovereignty as previously accepted. For our purpose, however, the position may best be summed up by saying that the States concerned have accepted the general supervision of the Council of the League in certain

specified questions of internal administration. They should not be considered for that reason as half-sovereign States, nor as being placed under the tutelage of the League.

The justification of the clauses is to be sought in the fact that they are necessary conditions for the future peace of the world. The Government of a State cannot disinterest itself completely from the fate of the nationals of another State who belong to the same race, speak the same language, or profess the same religion, as the majority of its own nationals. In the past a right of intervention has even been claimed in this connection, both by writers and in practice. This was, of course, not valid *jure gentium*,[1] but the possibility of international disputes arising in this manner is too serious to be dismissed lightly. In accordance, therefore, with the very principles for which the League of Nations stands, it is in every way greatly to be desired that all States will justify the hope expressed in the resolution of the Third Assembly and observe in the treatment of their minorities the highest standards of justice and toleration compatible with their existence as sovereign independent States.

[1] Compare the action of Greece in Crete, 1897; see also W. E. Hall: *International Law*, 7th ed., p. 300 (note); and Liszt: *Das Völkerrecht systematisch dargestellt*, 11th ed., p. 63.

INTERNATIONAL ARBITRATIONS UNDER THE TREATY OF ST. GERMAIN

By "O."

The rule of the Reparation Chapter of the Treaties which ended the Great War is to make the Reparation Commission the final authority for settling all questions in dispute under that Chapter; the Commission under the Treaties has the right not only to administer and enforce, but also to interpret the reparation obligations of Germany and her Allies so far as they are contained in the Reparation Chapter (Part VIII.) of the Treaties.[1]

The Commission is, however, primarily an administrative and not a judicial body, and is ill adapted for dealing directly with cases which involve any lengthy or careful investigation of historical fact, or legal or constitutional rights; it is therefore not surprising that, in a group of cases under the Reparation Chapter [2] of the Austrian Treaty, in which claims by Belgium and Czecho-Slovakia (as well as Italy and Poland) to the "restitution" of a part—perhaps the greater part—of the artistic treasures of Vienna were in dispute, the Commission was enjoined by the Treaty, instead of taking a direct decision on general grounds, to appoint a Committee of three Jurists to conduct an examination and to furnish a report to the Commission. The matters in dispute thus specially treated by what was in substance an international arbitration are defined in Article 195 of the Treaty of St. Germain and the Annexes to that Article; they arose out of the claims

[1] This rule does not apply to the important obligations in the nature of reparation which are contained in Part IX. (Financial Clauses) of the Treaties. Thus the Commission has no power authoritatively to interpret Article 260 of the Treaty of Versailles (Article 211 of the Treaty of St. Germain) which enforces the surrender of ex-enemy rights and interests in public utility undertakings and concessions in Russia, China, Turkey and elsewhere. Questions of interpretation under Article 260 are, in fact, being submitted to arbitration, by virtue not of any general arbitration clause in the Treaty, but of a special reference agreed between the Commission and the German Government. It may also be a matter of dispute whether the Commission's power of interpretation is a general judicial power or merely a power of deciding such questions of construction as arise in the course of administration.

[2] Part VIII., Article 195.

put forward at the Peace Conference of Paris by Italy, Belgium, Poland and Czecho-Slovakia, as States a part or the whole of whose territories was recently, or at some date in the past, comprised in the dominions of the Habsburg Monarchy, to pictures and other works of art or objects of historic interest which had been removed to or collected in or near Vienna by the Habsburgs. If the Committee in their report found that the removal to Vienna of the articles claimed amounted to a violation of legal rights belonging to the claimant States, the Commission was bound by the Treaty to order appropriate restitution. If the report of the Committee did not contain any such finding, the Commission had no power to take action. Thus in substance, though not in form, the ultimate decision of the matters in dispute rested with the Jurists' Committee, the Commission being the executive authority for the enforcement of the judgment of a tribunal appointed by itself.

The three lawyers appointed by the Commission to act on the Committee were of American, British and French nationality—Mr. Hugh A. Bayne of the New York Bar, Mr. J. Fischer Williams, K.C., and M. Jacques Lyon, Advocate at the Court of Appeal of Paris, all of whom had had considerable experience in the administration of the Treaties of Peace. The Court so constituted had thus an international character. It adopted what may be called the usual procedure in international litigation, the claimant Power first delivering a printed "Mémoire" or case, the defendant Power then delivering an answer, the Claimant replying (*réplique*) and the Defendant rejoining (*duplique*); in some instances a further and final effort was made to define in writing the point at issue; last of all followed an oral hearing at Paris of two or three days' duration.

Of the claims mentioned in the Treaty only those of Belgium and Czecho-Slovakia were actually submitted to the Committee. Italy made her arrangements directly with Austria, and the Polish claim, which related to one object only—the cup of King Ladislas—was satisfactorily disposed of without any reference to the Committee. Again, of the Belgian claims, those relating to stamps and dies for coins and medals, to arms and armour, and to a celebrated eighteenth-century map of Belgium, were settled, after a hearing before the Committee, by a friendly arrangement. The cases actually fought out and reported on by the Committee were: (1) two claims of Belgium, (*a*) to a famous triptych of

Rubens, known as the Triptych of St. Ildephonse, containing portraits of the Archduke Albert and the Infanta Isabella, constituted sovereigns of the Low Countries by Philip II. of Spain, and (*b*) to the treasure of the Order of the Golden Fleece; and (2) the important claim of Czecho-Slovakia to a large share of the pictures and works of art which are the pride of the collections at Vienna; this claim included amongst other things works by Michael Angelo, Titian, Tintoretto, Velasquez, Murillo, Van Dyck, Holbein and Dürer.

In all these three cases the members of the Committee were unanimous in upholding the Austrian view. In truth, the main point of substance at issue, both in the case of the Triptych of St. Ildephonse and in the Czecho-Slovakian claim, was the same—namely, whether movables purchased by a reigning Habsburg sovereign out of revenues of which by law he had the free disposal, became in law his absolute property, so that he was legally entitled to remove his purchases out of the country whose revenues he had thus used, and so that further, on the dissolution of the Habsburg Monarchy, the modern States in which that country was incorporated or which had succeeded to its rights had no legal claim to recover the articles purchased. To this question the Committee of lawyers had no hesitation in replying in the affirmative; indeed, once the Committee confined themselves as lawyers to a consideration of the actual legal position at the date of the events themselves as distinguished from what might have been the position had modern theories applied, and set aside any pretension to pass what is sometimes called "the verdict of history" on the Government of the Habsburgs and to distribute their succession as statesmen or diplomatists and not as lawyers, this result was inevitable. It may be of interest to quote in full the "conclusions" of the Committee in the Czecho-Slovak case.[1]

"The Committee therefore sum up their principal conclusions as follows:

(*a*) The question which they have to decide is one of the public law in force in Bohemia at the date of the removal of the works of art in question. It is not open to the Committee to enter on an enquiry as to the application to the facts established before them of general conceptions of justice, equity and good faith, except in so far as these general conceptions were embodied in the relevant Bohemian constitutional law.

(*b*) It has not been established that works of art purchased by the sovereigns

[1] The Report of the Committee was dated August 23, 1922, and the formal decision of the Reparation Commission was given in December, 1922.

out of their Bohemian revenues became the property of the ' Public Domain,' ' Crown ' or ' State ' of Bohemia or that there existed at any material time a rule of Bohemian constitutional law prohibiting the sovereign of Bohemia from removing permanently from the country all or any part of the works of art or other movable property so purchased. No such rule of law is to be found in the Lettres de Majesté, Resolutions of the Diet, or the Coronation Oath of the Kings of Bohemia, or in the other public documents produced to the Committee.

(*c*) The works of art claimed were at all material times the private and absolute property of the Princes of the House of Habsburg, or the ' settled ' family property of that House. It has not been established that those works of art, or any of them, were installed in any royal castle or other building in Bohemia in such circumstances as to make them the property of the Public Domain, the Crown, or, under whatever name it may be called, the State of Bohemia.

(*d*) The Treaty does not create, and international law does not recognise, any right of States whose union, whether federal or otherwise, is dissolved, to share in property acquired by the former common sovereign out of revenues contributed by those States, whether in proportion to their several contributions or otherwise, nor is the Republic of Czecho-Slovakia able to make a title to the works of art in dispute as a result of the settlement created by the will of Ferdinand II. In the view of the Committee on the true construction of that instrument, the ' State ' or ' Public Domain ' of Bohemia (to whose rights the Republic of Czecho-Slovakia has succeeded) is not, in the event which has happened of the termination of the rule of the Habsburgs in Bohemia, the beneficiary designated to take so much of the settled property as was purchased out of Bohemian revenues or as had been installed in Bohemian royal palaces. Nor in the view of the Committee did the State of Bohemia possess an ultimate or reversionary right to the settled property or any part of it, which took effect upon the exhaustion of the purposes of the settlement."

The claim of Belgium to the " Treasure " of the Order of the Golden Fleece was of a different character. The " Treasure " (whose exact composition was a matter in dispute) had been removed to Vienna by the Austrians in 1795 when the Habsburg dominions in the Low Countries were abandoned before the advance of the conquering French Republican Army.

In the Belgian view the Order of the Golden Fleece founded by Philip the Good—when that able sovereign nearly succeeded in founding on a permanent basis a middle kingdom from Bâle to Rotterdam whose establishment would have profoundly modified the history of Europe—was a national institution of the Catholic Low Countries and therefore of modern Belgium, and the appropriation of the property of the Order by the Habsburg Emperor and Knights who were his nominees was a violation of Belgian rights. The Austrian view, on the other hand, was that the Order was a dynastic institution of the " House of Burgundy "

and followed the fortunes of that House. The discussion was of great historical interest and opened many avenues of inquiry. But here again the Belgian argument laboured under the grave disadvantage of being in effect based on views of national rights and the rights of communities as distinct from monarchs or dynasties which were not yet received as law at the period when the crucial events took place. The Committee terminated a lengthy report with the following conclusions :— [1]

" To sum up the results of this long enquiry, conducted in the light of the arguments and documents which have been set before the Committee :

" The Order of the Golden Fleece was in its origin a dynastic Order of Chivalry or Knighthood, and even after account is taken of the profound modifications which time has imposed, it remains an Order of Chivalry, *i. e.* a courtly Order of ' Knights,' not necessarily of one nationality, conceived as grouped round a Sovereign. It was not a ' national Order ' in its origin, and it never evolved into a ' national ' or political institution of the Low Countries or of any other country. It never had any exclusive connection with the soil or population of the Low Countries; it never was irremovably established there.

" Even if the word ' national ' be used in the secondary sense in which it may be applied to an aristocratic Order attached to what has become in modern times, and with the growth of the idea of nationality, a national dynasty, the Golden Fleece cannot in the eighteenth century justly lay claim to this epithet of ' national ' in relation to the Low Countries.

" The original constitution of the Order contained, it is true, in Article VI. of the Statutes, an undertaking by the Sovereign to consult the ' major part ' of the Knights on weighty matters of state, of which he himself was the judge, but this provision represents at most an attempt to graft on an Order of Chivalry the germ of a possible political development which, in fact, never came to maturity; the political soil and atmosphere of Continental Europe in the fifteenth and sixteenth centuries was unfavourable to the growth of what would have been an aristocratic check upon royal authority. In the actual history of the Order, this right of the Knights was observed irregularly, and in form rather than in substance; the right never became part of any political constitution of the Low Countries, and ultimately, two centuries before 1794, the date as at which the rights of the Low Countries have to be determined in the present contest, after a vain and ineffective struggle for life, it disappeared.

" Thus the historical enquiry which the Committee has thought it its duty to undertake results in a conclusion which supplies the answers to the questions under discussion.

" In the last years of the eighteenth century—the date to which the mind must be carried back in order to decide whether the transfer of the treasure to, and its retention at, Vienna after the loss of the sovereignty of the Low Countries by the Hapsburgs (1797) was a violation of the rights of Belgium—the Order of the Golden Fleece, the history of which during a short period of its existence

[1] The Report was dated October 21, 1921, and the formal decision of the Reparation Commission was given in January, 1922.

was more or less closely wrapped up with the history of the Low Countries, had for nearly two centuries been a purely dynastic institution; all its rights and powers had passed to the 'Head and Sovereign' who absorbed in his person the whole remaining activities of the Order.

"When, then, in 1794 the Hapsburg sovereign received and preserved at Vienna the treasure which had been removed from Brussels before the French invasion, he did so in exercise of the powers that belonged to him, and made a normal use of his rights.

"What rights over the treasure which could be in conflict with, or higher than, his own did his action infringe?

"Clearly, he infringed no rights of the Low Countries, for the Committee has in vain endeavoured to discover what exclusive rights or privileges of a political or national character they could still rely on at this date, or have ever relied on at any period of their history; nor any rights of the Knights of the Order who, whether they liked it or not, had lost their rights for more than two centuries; nor the rights of the Treasurer, the responsible keeper of the treasure, no doubt, but still a 'functionary' of the Order, and as such bound to obey the commands of the sovereign.

"Nor could it successfully be argued that, at the time of the French conquest of the Belgian Provinces, the Order, regarded as an institution or legal corporation of a private character, had its 'seat' or 'legal domicile' in Belgium, seeing that Belgium at this date was no longer, and had ceased for something like two centuries to be, the centre of the activity of the Order and the residence of its directing powers.

"The Committee do not seek to deny that on many pages of the history of the Low Countries the destinies of the Order were intimately connected with the destinies of those countries, or that the Order, transplanted into Flanders almost immediately after its birth in Burgundy, flourished in Flanders and there enjoyed its short-lived apogee.

"But this brilliant past dates from the second half of the fifteenth century. It did not, and could not, give to the Low Countries at the end of the eighteenth century rights which have descended to contemporary Belgium."

So ended these international legal contests, of exceptional interest both from the objects in dispute and from the arguments employed in their solution. It is specially satisfactory to find that the tribunal was unanimous.

It may indeed be remarked that though the contest was international inasmuch as the disputants were sovereign States, the problems to be solved did not arise out of the relations of the two States parties to the disputes or their respective nationals, but were rather a resuscitation or reincarnation of internal constitutional disputes between subjects and sovereigns in which one modern State was standing in the shoes of the subjects and another in the shoes of the sovereign. By way of illustration for the mind of an English reader, it may be suggested that in English history a contest not dissimilar to the Belgian claim to

the Triptych of St. Ildephonse and the Czecho-Slovak claim to the pictures at Vienna would have arisen had Charles I. decorated Holyrood with the pictures which he had bought out of English revenues and the Protector had then claimed these works of art from a Scotland which had itself sent Charles into exile, on the ground that they had been wrongfully removed from England and were English State property.

INTERNATIONAL INTERPRETATION OF NATIONAL CASE LAW

By W. R. BISSCHOP, LL.D.

In the issue of this Year Book for 1922–1923, I suggested, in discussing the immunity of States in maritime law, that in order to overcome the difficulties attaching to State sovereignty in questions of this nature the assistance of the Permanent Court of International Justice might be invoked as a higher tribunal to which questions of jurisdiction could be submitted without any risk of interference with the sovereign rights and prerogatives of the Crown.

At the meeting of the Comité Maritime International, which was held in London from October 9 to 11, 1922, the question of "Immunity of State-owned Ships" formed one of the subjects for discussion, and the Conference was practically unanimous in agreeing that the difficulties to which such immunity gave rise could only be overcome by an international convention whereby a State should not insist on its sovereign rights except in the case of certain vessels, such as war-ships or ships engaged in State work of a purely non-commercial character, but that otherwise its ships should, like those of its own citizens with whom they were competing, be subject to the jurisdiction of its courts.

An international convention on these lines, even if sanctioned by subsequent national legislation, could hardly be considered an adequate solution of the difficulties connected with the question of immunity, unless at the same time means were provided for settling differences as to jurisdiction and for a uniform interpretation of the convention in all the courts of the various maritime countries. Varying interpretations of international conventions—or rather of the national laws based upon an international convention—are neither impossible nor improbable, though it is to the public interest that such varying interpretations should be avoided. Inasmuch as similarity

of enactments is aimed at in international conventions, an attempt should be made to obtain uniformity and, thereby, continuity of international jurisdiction. It may indeed be doubted whether the former would be required if the latter could be secured.

In order that a procedure might be set up whereby in future differences of jurisdiction would be avoided, I suggested at the above-mentioned Conference that the following resolution should be added to the proposals for the limitation of State immunity in maritime matters, viz. :—

> "Legal controversies which may arise with regard to provisions settled by such [international] convention [as proposed] should, in order to obtain continuity and uniformity of jurisdiction, be submitted for final decision to the Permanent Court of International Justice."

It is always dangerous to condense new matter of a controversial nature into a few words. The proposition was misunderstood. It was thought that it might be considered a precedent for appeal from national courts to the Hague Court, and it was felt unwise to overburden the proposal concerning so delicate a subject as State immunity with additional matter touching the sovereign rights of final jurisdiction. But the Hague tribunal is not a court of appeal, and it is unlikely that it will ever become one in the ordinary sense of the word. There must be finality in the dispensation of justice, and the Permanent Court of International Justice, unlike the Judicial Committee of the Privy Council, was not created to give a final interpretation on points of national law in any one country. Its function is to administer justice between nations and in international matters.

There can, however, be little objection to allowing the Court to determine the true meaning and character of international law, that is to say, of that relationship in international intercourse which is regulated by the rules of international law, and the interpretation of which by national courts is inadequate. There is a great difference between, on the one hand, allowing a litigant whose appeal, say, to the Judicial Committee of the Privy Council had been settled, to re-open his case by summoning his opponent before the Permanent Court of International Justice, even though the points at issue were points of international law, and, on the other hand, authorising a State to challenge a

final decision of a national court of last instance on points of international law, in the case of the court of some other country differing in the interpretation of the particular points at issue, in order to create uniformity in the interpretation of international law in all countries concerned.

Appeal from a judgment involves the reopening of the case, with the result that the previous judgment may be reversed. A challenge by a Government, as suggested, for the sake of uniformity and guidance, would not reverse a final judgment in a national court, if only because the parties to the suit would not be the same as the parties in the final proceedings before the national court. The parties in the latter would be the litigants who sued each other for damages in contract or in tort. In the proceedings before the Permanent Court at The Hague the litigants would be the representatives of the State who challenged the decision of the national court and the representatives of the State whose court of last instance had given the disputed decision.

This matter is, in fact, provided for in the Statute of the Permanent Court of International Justice. Among the rules regulating the procedure of the Court, Article 60 provides : " The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

As the Permanent Court is a court of last instance it would be impossible to obtain an interpretation of its judgment by any other authority than itself. As the parties in cases before the Court can only be States or members of the League of Nations,[1] it would be impossible to allow any State to ask for the interpretation of a judgment in a suit to which it was no party. This must be left to the parties themselves. Though the judgment has binding force between the parties only,[2] it may perhaps be supposed that its interpretation will have binding force upon the Court itself and so create a rule of international law for the future.

Similarly, in the case of disputes which arise under provisions of national law sanctioning an international convention, the proceedings may be continued until final judgment is given by the supreme national court. The decision of that supreme national court may involve an interpretation of an international

[1] Art. 34 of the Statute.

[2] Art. 59 of the Statute.

character. It may refer to one of the essential elements of the international convention sanctioned by the national law in question, and in that respect it may contradict the construction put on the provisions of the international convention by some other supreme court in some other State, or it may practically reverse the generally accepted meaning of the rules laid down in the convention.

As international law is at present construed it represents, for the most part, international law viewed from a national standpoint. When issues of a controversial character are tried it is not improbable that the interpretation given by a national court will be more national than international in its character. National courts have to administer the statute and common law of their own country and can only administer international law as part of such statute and common law. Is it to be wondered at that an international convention when subjected to judicial scrutiny in the courts of two different countries and interpreted in each of them from a national standpoint, should reveal ambiguity in its provisions and show itself open to various interpretations? Can any serious objection be raised to the suggestion that for the sake of uniformity and continuity these various interpretations should be brought before the Permanent Court at The Hague and submitted to its final decision, and that the Court's ruling should be accepted and followed in subsequent cases by all national courts as the proper interpretation of the conventions concerned? The great merit of the Permanent Court of International Justice is that it views international law from an international standpoint, that it may be considered to adopt an international view of international issues and thereby to lay down the true international interpretation of international statutory law.

To what extent does the Statute for the Permanent Court of International Justice provide means for obtaining this result? In Article 14 of the Covenant of the League of Nations which lays down the jurisdiction of the Hague Court it is provided that "the Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it," and that "the Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." Is the desired object obtainable by means of these provisions? The suspicion aroused at the

meeting of the Comité Maritime International proved that the proposed resolution was thought to aim at something more than the obtaining of an "advisory opinion," which is binding on nobody and is a guidance only to those who ask for it.

The "advisory opinion" of the Covenant recalls the provision in Section 4 of the statute constituting the Judicial Committee of the Privy Council,[1] viz. :—

"that it shall be lawful for His Majesty to refer to such judicial committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit, and such Committee shall thereupon hear or consider the same, and shall advise His Majesty thereon in manner aforesaid."

It is left to the Crown to follow such advice or not, as it sees fit. Only, if the Crown follows the advice tendered, it grants the authority and the sanction of the executive to the finding of the Judicial Committee. The advice made effective by an Order in Council is enforceable in His Majesty's Dominions. Such sanction the League of Nations cannot give to any advice tendered by the Permanent Court. The advice, even if followed, remains merely a guidance to the League for its own conduct, and whatever the League does in consequence of the advice given, is an act for which the League is solely responsible.

The fundamental difference between the Judicial Committee of the Privy Council and the Permanent Court of International Justice is that the Judicial Committee is part of the jurisdiction exercised by the Crown in consequence of its prerogative, whereby the Crown retains jurisdiction on appeal from the highest civil or criminal courts in any colony. Such authority is lacking in the case of the Hague Court. The sanction of its decisions is derived from the submissions made by the States who invoke its jurisdiction and not from the League of Nations which created it, but which does not exercise a prerogative of sovereignty, a prerogative foreign to all international conventions.

The League of Nations cannot compel the acceptance by States of any advice tendered by the Permanent Court, and solutions of differences of opinion on points of international law cannot be obtained in that manner. Other means must be found in order to attain international uniformity. The Permanent Court exists for the assistance of all States or members of the League of Nations. It is considered the true interpreter of the

[1] 3 and 4 Will. IV. Ch 41.

laws regulating international relations. To it should be submitted the final interpretation of international agreements and conventions, not through the intermediary of the League of Nations, but direct by the States concerned. A submission *ex parte* of questions for an advisory opinion cannot achieve this object. The construction given by the Permanent Court should be accepted as the proper interpretation of a convention and be adopted by all parties to the convention. Only in that way would such submissions form part of, and assist in, the building up of an international jurisprudence which again is the supplement, if not the real foundation, of international law.

The submission to the Permanent Court may be made by any States who are entitled to appear before it. Such submission may, of course, be made by mutual consent whenever a controversy—friendly or unfriendly—arises. There is, however, one way in which it might become more effective. A special provision should be laid down in the international convention itself to the effect that the construction and interpretation of its provisions shall be left in the final resort to the Permanent Court of International Justice.

THE MANDATE OVER NAURU ISLAND

By A. H. CHARTERIS, LL.B.,

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I.—Introductory.

Nauru Island,[1] originally named Pleasant Island by its discoverer, Captain Fearn of the British ship *Hunter* in 1798, is a small coral island in the Pacific Ocean of some eight square miles or 5000 acres in extent, lying about twenty-six miles south of the equator in long. 165° 55′ east. With its nearest neighbour to the eastward, Ocean Island (a British possession) in the Gilbert and Ellice Islands Group, it contains the richest deposit of phosphate rock in the Pacific, the output averaging from 85 per cent. to 88 per cent. tribasic phosphate of lime. In Nauru the deposits, which are estimated at 112,000,000 tons, are found in a central, somewhat elevated and all but unpopulated plateau, the natives, with the exception of a single small settlement, inhabiting a narrow, fertile strip lying between the surrounding reef and the escarpment. Winning the phosphate does not interfere with native food supplies, as food trees are uncommon on the central plateau. The climate is healthy, malaria being unknown. Throughout the year the temperature varies only from eighty-five to ninety degrees Fahrenheit, with considerable humidity. The natives, 1084 in number, are of fine physique, intelligent and bright, and friendly in manner. In addition to "pidgin English" they speak a language of their own and form one of the smallest communities in the world for which a separate translation of the Bible has been made. They are organised in twelve districts, each under the command of a native chief. Apart from its mineral deposits Nauru is of no importance, economic or strategic.

In 1888 the island was annexed by Germany as one of the Marshall Islands, and the name was changed from Pleasant to

[1] *Nauru and Ocean Island,* by Harold B. Pope: *Federal Parliamentary Paper,* 1920–1, No. 148, F. 16251.

Nauru. It was not till 1901, however, that a specimen of the native rock brought from the island in 1897 and used in the Sydney office of the Pacific Islands Company as a doorstop, was identified by Mr. Albert F. Ellis, an employee of the company, as phosphate rock. Similar deposits were then discovered on Ocean Island, and it was on that island that operations were first commenced on its formal annexation by Great Britain in 1901. In 1905 a concession was granted by the German Government to a German company known as the Jaluitgesellschaft to exploit exclusively all guano and phosphate deposits in the Marshall Islands Protectorate. This concession was to continue for ninety-four years as from April 1, 1906, but on January 22, 1906, the German exploitation rights over Nauru were acquired by the British company, with the consent of the German Government. In consideration of this the British company surrendered to the German company certain cocoanut plantations and trading stations in the Marshall and Caroline Islands, transferred to it a large block of shares and agreed to pay a royalty per ton of phosphate exported.

At the outbreak of war the British company, which had been reconstructed as the Pacific Phosphate Company, and had erected considerable plant on both Nauru and Ocean Islands, including steel cantilever jetties projecting beyond the reef, was producing from the former island some 212,000 tons per annum, of which a considerable quantity went to Germany in subsidised German steamers, and a still larger quantity to Australia. The monopoly continued to be held by the Pacific Phosphate Company until June 25, 1920, when it was purchased, as mentioned below, by the Governments of the United Kingdom, Australia and New Zealand.

Nauru Island was surrendered to H.M.A.S. *Melbourne* on September 9, 1914, and was occupied on November 9, 1914, by Australian forces dispatched from Rabaul in German New Guinea. Until the termination of the military occupation, on the formal approval of the mandate by the Council of the League of Nations on December 17, 1920, the island was administered by Mr. G. B. Smith-Rewse, appointed by the British Phosphate Commission, which will be referred to later, and the general supervision over the Administrator was in the hands of the Colonial Office.

At the Peace Conference of Paris the claims of Japan,

Australia, New Zealand and South Africa for permission to annex the ex-German territories which they held under military occupation were vigorously urged. Mr. W. M. Hughes' claim to Nauru on behalf of Australia was met by a claim from New Zealand for a share in the administration on the ground of proximity. As part of a general compromise it was agreed by the principal Allied and Associated Powers that the four territories held by the three Dominion forces (German New Guinea and Nauru, German South-West Africa and Western Samoa) should be placed under mandates of the "C" type, "to be administered under the laws of the Mandatory as an integral portion of its territory subject to the safeguards . . . in the interests of the indigenous population." By resolution of the British Empire Delegation, adopted in Paris in 1919, His Britannic Majesty was constituted the mandatory of Nauru Island.

As is well known, Article 22 of the Covenant does not impose on mandatories of the "C" type the obligation "to secure equal opportunities for trade and commerce of all other members of the League of Nations," which is imposed on mandatories of the "B" type. Lord Milner explained in the House of Lords [1] that Article 22 was deliberately drafted so as to exclude this obligation. This, it is understood, was done at the instance of Mr. Hughes, who, on behalf of Australia, represented that the White Australia Policy would be endangered if a large influx of Asiatics were permitted in the mandated territory of ex-German New Guinea lying only some seventy miles distant from the nearest point in the Commonwealth.

The mandates for the "C" territories as drafted by the selected mandatory Power were identical in form and were settled by the Council of the League of Nations on December 17, 1920,[2] as being in conformity with Article 22 of the Covenant. For each territory the mandatory is "His Britannic Majesty," but, except in the case of Nauru, the mandate specifies the agency through which the mandate shall be exercised. Thus the mandate for German New Guinea is conferred on "His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia." [3] For Nauru, however, the mandate is conferred on "His Britannic Majesty (hereinafter called the

[1] *Parl. Debates*, H. of L., July 29, 1920, Vol. 41, p. 639.
[2] *League of Nations Official Journal*, Vol. I. p. 84.
[3] *Ibid.*, p. 85.

Mandatory)," [1] and the agency through which the mandate shall be exercised is not specified.

II.—The Tripartite Agreement.

In the case of Nauru the agency through which the mandate shall be exercised is supplied independently by an agreement of July 2, 1919, made, be it observed, some seventeen months before the formal issue of the mandate, between the Governments of Great Britain, Australia and New Zealand, providing (*a*) for the administration of the island and (*b*) the exploitation, division and disposal of the phosphate rock. This agreement, as Lord Milner explained, was entirely due to the intervention of the United Kingdom for the purpose of mediating between the rival claims of Australia and New Zealand. Participation in the agreement was offered, it is understood, to the Governments of South Africa and Canada and declined. The agreement was confirmed in the Imperial Parliament by the Nauru Island Agreement Act, 1920,[2] and in the Australian Parliament by an Act of the same title in the previous year.[3] There is, however, an important difference between the two Acts. By virtue of an amendment carried against the Government in Standing Committee, Section 1 (1) of the Imperial Act was made to read, "The agreement is hereby confirmed subject to the provisions of Article twenty-two of the Covenant of the League of Nations." The Commonwealth Act makes no mention of the Covenant, nor, save in the preamble, of the mandate itself. In New Zealand the agreement was confirmed by Resolution of the House of Representatives on October 23, 1919.[4]

In order to understand the basis of the agreement it should be explained that as from June 25, 1920, the three Governments purchased from the British Phosphate Company its whole right, title and interest in Nauru, as well as its plant on that island and Ocean Island, for the sum of £3,500,000. The respective contributions of the three Governments were 42 per cent. each for Great Britain and Australia and 16 per cent. for New Zealand. The agreement then provides for an Administrator to be appointed for

[1] This mandate has never been issued as a Federal Parliamentary Paper. It is available only as an Imperial paper and in the *League of Nations Official Journal*, Vol. II. p. 93.

[2] 10 and 11 Geo. V. ch. 27. [3] 17 Commonwealth Acts, No. 8 of 1919, p. 48.

[4] *Parl. Debates* (*New Zealand*), Vol. 185, p. 795.

the first period of five years by Australia, and thereafter as shall be agreed on by the three Governments. The Administrator has sole legislative, executive and judicial authority in the island. He is empowered by Article 1—

" to make Ordinances for the peace, order and good government of the Island, subject to the terms of this Agreement, and particularly (but so as not to limit the generality of the foregoing provisions of this Article) to provide for the education of children on the Island, to establish and maintain the necessary police force and to establish and appoint courts and magistrates with civil and criminal jurisdiction."

No reference is made in the agreement to the " safeguards . . . in the interests of the indigenous population " which are prescribed for " C " mandates by Article 22 of the Covenant of the League of Nations. It is only through Section 1 (1) of the Imperial Nauru Island Agreement Act, 1920, that these are included in the agreement by inference.

The title to the phosphate deposits is vested by the agreement in a British Phosphate Commission of three members, one to be appointed by each of the three Governments, who are entrusted with sole charge of exploiting the deposits and distributing the output. Each of the three Governments has a claim on the annual output for home consumption only, not for export, the quota being in the same ratio as their respective contributions to the purchase price, viz. 42 per cent. for Great Britain and Australia and 16 per cent. for New Zealand. It is further provided in Article 11 that these quotas shall be charged—

" at the same f.o.b. price to be fixed by the Commissioners on a basis which will cover working expenses, cost of management, contribution to administrative expenses, interest on capital, a sinking fund for the redemption of capital and for other purposes unanimously agreed on by the Commissioners and other charges. Any phosphates not required by the three Governments may be sold by the Commissioners at the best price obtainable."

Any surplus funds derived from such sales shall be credited by the Commissioners to the three Governments concerned in the above-mentioned proportion and either held in trust for such Government to such uses as they may specify or, if so directed by the Government for which they are held, paid over to such Government.[1]

The position, therefore, is that while the mandatory of Nauru

[1] Article 12.

is expressly declared to be His Britannic Majesty, the mandate is, by agreement between the Governments of three constituent portions of the British Empire, exercised by an Administrator acting as their agent and appointed by one of them for the first five years and to be appointed thereafter as they shall determine; while, as regards the exploitation of the minerals, the three Governments have by purchase converted a privately-owned into a publicly-owned monopoly, with this difference, that, whereas the previous monopoly-holder was not bound to discriminate between purchasers, the three Governments have a first call in fixed proportions on the output for home consumption only. Any part of the respective allotments not taken up by one Government may be divided between the other two up to the limit of their requirements for home consumption, in the proportions fixed above. Any part not required for home consumption shall be sold at the market price, and the proceeds thereof carried to the credit of such Government with the Commission.[1]

One further article (Article 13) of the agreement should be quoted since it attracted the special attention of the Permanent Mandates Commission. It provides :

> " There shall be no interference by any of the three Governments with the direction, management or control of the businesses of working, shipping or selling the phosphates and each of the three Governments binds itself not to do or to permit any act or thing contrary to or inconsistent with the terms and purposes of this Agreement."

Before the Permanent Mandates Commission at Geneva in August, 1922, Sir Joseph Cook, the Australian High Commissioner, explained that this article did not release the Commission from the obligations of citizenship or from the observance of any of the ordinances and laws for the protection of natives. It was the duty of the Administrator, he said, to report to the Australian Government anything to which he took exception. The Phosphate Commission might not contravene the general laws and ordinances governing labour or other conditions on the island.[2]

[1] In the period from December 20, 1920, to December 31, 1921, 17½ per cent. of the total output of 36,425 tons from Nauru and Ocean Islands was so disposed of (to Sweden, Germany and Japan). *Report of the British Phosphate Commission : Federal Parliamentary Paper*, 1922, No. 23, F. 9259, p. 1.

[2] *Minutes of the Permanent Mandates Commission of the League of Nations :* Second Session, August 1–11, 1922, Geneva, p. 57 (English version).

The Reports [1] prepared for submission to the League of Nations by the Administrator consist of two documents: (*a*) Report covering the period of military occupation and until December 17, 1920;[2] (*b*) Report covering the period from December 17, 1920, until December 31, 1921.[3] For part of the latter period (up to June 30, 1921) the report and accounts of the British Phosphate Commission are contained in a Federal Parliamentary Paper,[4] but do not appear to have been submitted to the League of Nations.[5]

Notwithstanding the lack of reference to the mandate in the agreement, the report for the later period contains a brief statement of "Measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5 of the Mandate." [6] Compared with the information asked for in the *Questionnaire* of the Mandates Commission [7] the report appears perfunctory. Unfortunately the official copy of the *Questionnaire* did not reach Melbourne until the Administrator's report was on the point of dispatch to Geneva. The report, therefore, needed supplementing by further information. This was given orally by Sir Joseph Cook, who, in accordance with the rules of procedure of the Mandates Commission, attended the sittings on August 4th at Geneva and answered questions put to him by the Commission based on each item of the *Questionnaire*.

III.—The Permanent Mandates Commission.

This Commission, which under Article 22 of the Covenant has the duty of receiving and examining the annual reports of the mandatories and of advising the Council on all matters relating

[1] As the Administrator's reports contain no reference to labour conditions on the island, information supplied by the British Phosphate Commission is given in an Appendix.

[2] *Federal Parliamentary Paper:* 1922, No. 5, F. 9183. [3] *Ibid.*, No. 4, F. 9184.

[4] 1922, No. 23, F. 9259.

[5] The League of Nations documents bearing on Nauru are: (a) *Minutes of the Second Session of the Permanent Mandates Commission*, 1922 (A. 36, 1922, VI. C. 548, M. 333, 1922, VI.); (b) *Observations of the Commission on the Reports relating to the Territories under C Mandates* (C. 551, M. 333, 1922, VI.); (c) *Report on the Second Session submitted to the Council on behalf of the Permanent Mandates Commission by the Chairman, the Marquis Theodoli* (C. 550, M. 332, 1922, VI.); (d) *Comments on the Observations of the Commission presented by the accredited Representatives of the Commonwealth of Australia and Japan* (A. 37, 1922, VI. C. 552, M. 334, 1922, VI.).

[6] Pp. 6 and 7.

[7] See *League of Nations Official Journal*, December, 1921 (Vol. II. p. 1134).

to the observance of the mandates, was appointed by resolution of the Council of December 1, 1920, and at the present moment consists of the following, who accepted the Council's invitation to become members. They are selected by the Council on grounds of personal merit and competence and must not, while members, hold any office which puts them in a position of direct dependence on their Government. They receive travelling expenses and a subsistence allowance now fixed at seventy gold francs per day. The present Commission consists of representatives of four mandatory Powers, viz. the British Empire, Belgium, France and Japan, and of five non-mandatory Powers, viz. Holland, Italy, Portugal, Spain and Sweden.[1] The members are: the Rt. Hon. Sir F. Lugard [2] (Great Britain); M. Pierre Orts [3] (Belgium); M. Beau [4] (France); M. Kunio Yanagida [5] (Japan); M. Van Rees [6] (Holland); the Marquis Theodoli [7] (Italy), *President;* M. Freire d'Andrade [8] (Portugal); Count de Balobar [9] (Spain) and Madame Bugge-Wicksell [10] (Sweden). The Commission is assisted by a Permanent Mandates Section of the Secretariat of the League of Nations, consisting of a Swiss member, Dr. W. E. Rappard, formerly Professor at Harvard, as Director; an Italian member, Signor Castatini, formerly of the Italian Colonial Office; and two English-speaking secretaries.

Of the competence of the members of the Mandates Commission there can be no doubt. All of them by virtue of administrative experience, contact with subject races or special study, are expert in colonial affairs, though none, it would seem, had either personal experience or special knowledge of conditions in the Pacific Islands. The thoroughness of their study of the mandatory system is best shown by the searching *Questionnaire* which they have prepared with reference to each of the "B"

[1] See Minutes of Thirteenth Meeting of the Council in June, 1921 (*League of Nations Official Journal*, Vol. II. p. 644).

[2] Formerly Governor-General of Nigeria.

[3] Formerly Legal Adviser to the Belgian Ministry of the Colonies, and, during the war, Secretary-General to the Belgian Foreign Office.

[4] Formerly *chef de cabinet* to M. Delcassé; afterwards French Minister to Switzerland.

[5] Formerly Clerk to the Japanese House of Peers.

[6] Formerly Vice-President of the Council of the Dutch East Indies.

[7] Formerly Under-Secretary of State for the Colonies.

[8] Formerly Minister for Foreign Affairs.

[9] Formerly Spanish Consul in Jerusalem.

[10] Member of the Swedish Parliament and one of the Delegates to the Second and Third Assemblies of the League of Nations.

and "C" mandates and those respecting Palestine, Syria and the Lebanon. The *Questionnaire* regarding the "C" mandated territories, for example, comprises no less than fifty-seven questions grouped under thirteen headings,[1] and the others are on a corresponding scale.

The official view regarding the functions of the Council in respect of the Mandatory's Annual Report is to be found in M. Hymans' "Report on the Obligations falling upon the League of Nations under the terms of Article 22 of the Covenant (Mandates)," adopted by that body in August, 1920.[2]

> "The Annual Report stipulated for in Article 22 (7) should certainly include a statement as to the whole moral and material situation of the peoples under the Mandate. It is clear therefore that the Council should examine the question of the whole administration."

It was this statement of policy, no doubt, which led the Mandates Commission to express apprehensions as to the possible effect of the present régime on the well-being and development of the natives. These apprehensions, again, called forth a rejoinder from the Commonwealth Representative in his comments mentioned later.

IV.—The Mandates Commission's Report.

It may be best to summarise (as regards Nauru) the *Observations of the Commission on the Reports relating to the Territories under "C" Mandates*,[3] and then deal with some of the points which appear from the minutes to have troubled the members during the proceedings.

Apart from drawing the Council's attention to a disturbing phenomenon common in all mandated islands in the Pacific—the presence of indentured Chinese labourers unaccompanied by their womenkind—the Commission in effect asked to be provided in future with fuller and better information regarding the position of the British Phosphate Commission *vis-à-vis* the Administrator. Notwithstanding the explanation of Sir Joseph Cook, the Commission deemed the position obscure, inasmuch as the agreement

[1] See *League of Nations Official Journal*, Vol. II. pp. 1124–33. Accordingly the draft report of the Australian Administration of New Guinea for the current year already runs to over 500 pages.

[2] *Ibid.*, Vol. I. pp. 339–341.

[3] A. 35, 1922, VI.

stipulated for entire independence of the Phosphate Commission in all matters concerning the exploitation of the phosphates. The Mandates Commission was, therefore, in doubt whether the labour conditions were under the control of the Administrator, and through him of the mandatory Power, or under that of the three apparently independent Commissioners.

Finally the Mandates Commission desired—

" to know whether the establishment by the three Governments concerned of a State organisation enjoying the sole right of development of the only natural resources of the area is fully in keeping—although no formal provision under the Regulations for C Mandates forbids it—with the disinterested spirit which should characterise the mission of a mandatory State." [1]

The Council of the League of Nations resolved to transmit this report to the mandatory Powers concerned.

V.—The Delegation of the Mandatory's Powers.

The Commission was not unnaturally surprised to find that neither the agreement between the constituent members of the British Empire made at Paris in 1919 nor the Tripartite Agreement of 1920 constituting Australia the *de facto* Administrator for five years had been communicated officially to the League of Nations.[2] M. Orts, the Belgian member, appears further to have doubted whether it was within the competence of the Commission to treat as mandatory a Power not designated in the mandate, but this view did not prevail with the Commission. The *Observations* record merely—

" some uncertainty as to whether the Mandate for the Island of Nauru with the responsibility which it entails is to be considered by the League of Nations as having been in effect transferred to the Australian Government." [3]

As to this it may be pointed out that " His Britannic Majesty " (otherwise the British Empire) is merely a geographical expression in regard to a territory which a mandatory is authorised to administer under his laws as an integral part of his territory. There is, in fact, no general system of laws prevailing in the British Empire and if, as is not free from doubt, Article 22 of the

[1] A. 35, 1922, VI., p. 5.

[2] *Minutes of Permanent Mandates Commission*, p. 46. The second agreement appears to have been known to the Secretariat but had not been officially communicated *per* M. Rappard (*ibid.*).

[3] *Observations of the Commission*, p. 4.

Covenant does not oblige the mandatory to " administer under his laws," some delegation of authority is in practice necessitated. The conflict of laws provides an analogy. British nationality as a criterion of " personal status " of itself connotes subjection to no one of the numerous systems of law within the Empire. Recourse must be had to the subsidiary test of domicile whence arise the materials for the conflict of laws, for which the Doctrine of Renvoi is advanced to furnish a solution.[1] Accordingly the maxim *delegatus non potest delegare* must in the present instance give way to the necessities of the case.

VI.—Monopolistic Régime.

The doubts entertained by the Mandates Commission as to whether the monopolistic exploitation of the sole economic resource—the phosphate deposits—is consistent with the spirit of international trusteeship, although it is not formally forbidden by the Mandate, echo the argument put forward by the United States Government in its correspondence with the Foreign Office respecting economic rights in mandated territories.[2] In claiming a moral right as one of the Principal Allied and Associated Powers to be consulted as regards the terms of any mandate, the United States, it will be remembered, several times reiterated the principle—

" that the future peace of the world required, as a general principle, that any alien territory which should be acquired pursuant to the Treaties of Peace with the Central Powers, must be held and governed in such a way as to secure free and equal treatment in law and in fact to the commerce of all nations." [3]

The correspondence, it is true, related primarily to apprehensions entertained in the United States that American oil interests were being excluded from participation in the resources of Mesopotamia by the action of the British Government, and special reference was made to the terms of the " A " Mandate prepared in London for adoption by the League of Nations by a Commission on Mandates presided over by Lord Milner. But the Colby Note of November 20, 1920, reiterated even more strongly the principle as governing all mandated territories.

Now, as regards the communities in " A " territories which

[1] Cf. *In re Johnson : Roberts* v. *Attorney-General* (1903), 1 Ch. 821.
[2] Misc. No. 10 (1921). [Cmd. 1226.]
[3] Mr. Davis to Earl Curzon, May 12, 1920 (*ibid.* p. 2).

the appointed mandatory is to furnish with "administrative advice and assistance until such time as they are able to stand alone," there can be no question that monopolistic exploitation of the territory's resources by the mandatory is excluded. For the "B" territories, on the other hand, the Covenant expressly imposes on the mandatory the obligation to "secure equal opportunities for the trade and commerce of other members of the League"—a limitation to members of the League which the United States contends to be inconsistent with the principles agreed on by the Allied Powers at Paris.

But as regards the "C" territories, the mandatory's obligation appears from the statement of Lord Milner in the House of Lords on July 29, 1920,[1] to have been deliberately drafted to exclude the obligation to maintain the "open door." In a mandate of this type, the obligations of the mandatory are not clearly stated. They are expressed only by reference to those incumbent on a mandatory of a "B" territory, viz. "subject to the safeguards above mentioned in the interests of the indigenous population," a phrase which, according to the British interpretation (shared apparently by the Mandates Commission), does not include the "equal opportunity" clause, conceived as this is in the interests of others than "the indigenous population." Japan, as is well known, made a reservation on the interpretation of this clause in the Council on the occasion of the issue of the "C" mandates.[2] It would appear, therefore, that while the United States may appeal to some agreement on a general principle which the Covenant itself does not incorporate, it is not open to the Mandates Commission, which after all is a subordinate organ of the League of Nations, to go outside the terms of the instrument by which the League is constituted. The terms of the trust which a "C" mandatory is bound to perform are to be found only in Article 22 of the Covenant.

Let us consider the position of the mandatory of Nauru in the light of the terms of the Covenant. The mandatory is an international trustee deriving title from a twofold source: (*a*) as regards the allocation of the mandate from the Principal Allied

[1] Speaking both as Secretary of State for the Colonies and as former Chairman of the Inter-Allied Commission on Mandates above referred to. (See *Parl. Debates*, H. of L. Vol. 41, p. 627.)

[2] For the arguments in favour of this reservation see T. Baty: "Protectorates and Mandates," *British Year Book of International Law*, 1921–2, pp. 119–121. For text see *League of Nations Official Journal*, Vol. II. p. 95.

and Associated Powers, including the United States, which has not yet approved the mandate; (*b*) as regards the terms of the mandate, from the Council of the League of Nations, which approved the mandate as being in accordance with Article 22 of the Covenant.[1] No question under (*a*) can, it is submitted, come before the Permanent Mandates Commission, appointed as it is by the Council of the League of Nations. The mandatory, then, is a trustee for the League of Nations, and the purposes of the trust are the " well-being and development " of the native population, which are declared to form " a sacred trust of civilisation," the performance of which is to be secured by the " safeguards " already referred to. Concerning the material resources of a " C " mandated territory nothing whatever is said, either in the Covenant or the mandate, save by implication, and then only, it is submitted, in the sense of giving the mandatory a free hand. Inasmuch as the territory " can be best administered under the laws of the Mandatory as integral portions of its territory," and inasmuch as no mention is made of rights conferred on other members of the League of Nations, it is singularly hard to distinguish this régime from incorporation subject to conditions.[2] In the absence of international precedents, an analogy from the every-day administration of trusts seems not out of place. A " C " mandatory might fairly be described as a trustee with a beneficial interest, in contrast with a bare trustee (*e. g.* a banker with whom a customer deposits silver plate for safe custody). His position might be likened to that of a widow to whom property has been left by her husband on trust to provide a specified income for each of the children of the marriage. Subject to her specific obligations as trustee, it is clear that the widow may deal with the property as she sees fit.[3] In the case in point, the

[1] See " Report on the Mandatory System to the Council " prepared by M. Hymans (Belgium) in *League of Nations Official Journal*, Vol. I. p. 334.

[2] Cf. Lord Milner's statement: " These Pacific Islands and South-West Africa were deliberately handed over to their Mandatories with the provision of the Article (viz. 22 of the Covenant) drawn in such a way as to make it clear that they would have no limitation on their sovereignty except the particular limitation of the protection of the natives." (*Parl. Debates*, July 29, 1920, H. of L., Vol. 41, p. 627.)

[3] An analogy, though of a more complicated character, is furnished by the recent decision of the High Court of Australia in the case of *Purcell* v. *Deputy Federal Commissioner of Taxation* (1920–1921), 29 Commonwealth Law Reports, p. 464. There A, influenced to some extent by a desire to lessen the burden of taxation, declared himself a trustee of certain property for himself, his wife and daughter equally. In declaring the trust he reserved to himself exclusive powers of management and disposition. The court having found on evidence that the settler did, in fact, at the time of executing

purposes of the trust are the well-being and development of the natives, and the corpus of the estate is at the disposal of the mandatory, except so far as restricted by the "safeguards" (*e. g.* prohibition of military or naval bases).

It was partly for this reason and partly for lack of all supporting evidence that Sir Joseph Cook criticised the following passage in the *General Report of the Mandates Commission on "C" Mandates :* [1]

"It [the Commission] fears on the other hand, that the disproportion between the material wealth of this island and the small number of its inhabitants may induce the mandatory Power to subordinate the interests of the people to the exploitation of the wealth. It is, therefore, not without the deepest concern that it considers the question whether the well-being and development of the inhabitants of this island, which in the words of the Covenant 'form a sacred trust of civilisation,' the accomplishment of which it is the Commission's duty to safeguard, are not in danger of being compromised."

Sir Joseph Cook took the somewhat unusual step of presenting formal *Comments on the Observations of the Commission*, in which, on another matter, he was joined by the representative of Japan.[2]

The passage in question was the more remarkable in that the General Report of the Commission to the Council [3] states that—

"the Commission is happy to note that taken as a whole, the reports of the mandatory Powers responsible for the administration of territories under 'C' Mandates give evidence one and all, of an earnest desire to secure for the population concerned the benefits arising out of the application of the provisions of Article 22 of the Covenant and of the mandates."

It was sufficient for Sir Joseph Cook to point out that there was no evidence to justify the apprehensions entertained by the Commission. No profit accrued to the three Governments concerned in the exploitation of the phosphates. Hence there was no motive to "subordinate the interests of the people." The

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the document, intend that his wife and daughter should, by virtue of the declaration of trust, become the beneficial owners of two-thirds of the property comprised in it, *held* that the declaration created a trust which was valid and binding on the settler, and was not affected by the provisions of Sec. 53 of the Income Tax Assessment Act, 1915–16 (which, the defendant had contended, invalidated the declaration in a question of income-tax assessment).

[1] Minutes of Meeting of Permanent Mandates Commission, August 7, 1922 (A. 36, 1922, VI.).

[2] A. 37, 1922, VI. (C. 552, M. 334, 1922, VI.).

[3] A. 39, 1922, p. 4.

real benefit to the Government was that their farmers were assured of a supply of the best phosphate at less than world-prices.

In conclusion it should be added that the terms granted by the Administration to native owners for land required for mining are considerably better than under the German régime. Up to July 1, 1921, such owners received only a royalty of a half-penny a ton for all phosphates shipped from their land. They are now paid (*a*) £20 per acre for all phosphate lands taken up by the Commission on lease subsequent to June 30, 1921, and (*b*) a royalty of 2*d*. per ton on all phosphate shipped from their respective lands. In addition a royalty of 1*d*. per ton is paid to the Administration to be held in trust for the benefit of Nauruans generally.[1] The new régime was instituted after consultation among the three Governments concerned. The remuneration is small, perhaps, in the eyes of a civilised man in view of the immense value of the product in the Commonwealth, but it is not small to a child of nature who lives on cocoa-nuts and fish and sunshine.

Appendix.

Information regarding Labour Conditions on the Island supplied by the British Phosphate Commission.

As Nauruans dislike working on their own island, the British Phosphate Commission employs some 592 Chinese, who were first introduced by the Pacific Phosphate Company, 169 Caroline Islanders and 22 Marshall Islanders. They are housed in large, well-built barracks, electrically lit and well ventilated. They receive liberal rations and first-class medical attention free of charge. Two doctors and a chemist are provided, as well as a surgery, dispensary, operating theatre and hospital. Besides being allowed a number of fixed holidays during the year, the labourers do not work on Sundays, nor, except when a steamer is loading, on Saturday afternoons. If employed on Saturday afternoons or on a holiday they receive over-time pay, which, in the exceptional case of Sunday work, amounts to double rates. The rates of pay for ordinary coolies working in the field are: £1 12*s*. to £1 16*s*. per month; bonus for good work and good conduct, 4*s*. per month; overtime 2*s*. 6*d*. to 3*s*. per month; rations, £1 12*s* 6*d*. to £1 17*s*. 6*d*. per month. Field coolies are all employed on piece-work and commonly finish their day's work in from four to five hours. The Australian Commissioner, Mr. H. B. Pope, states that he knows of no place in the Pacific where coloured labourers "are better housed, paid, fed and treated than they are on Nauru."[2]

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[1] Administrator's Report, December 17, 1920–December 31, 1921, p. 4.

[2] *Nauru and Ocean Island*, by Harold B. Pope: *Federal Parliamentary Paper*, 1920–1, No. 148, F. 16251, p. 44.

Finally, it should be mentioned that the Prime Minister of Australia, in a statement to Parliament on September 8, 1922, emphasised two points which do not appear to have been brought clearly before the Permanent Mandates Commission. The first was, that while the Administrator acts under instructions from the Commonwealth Government, in all important matters the Commonwealth Government consults the other two Governments. These Governments receive copies of all ordinances made by him and of the orders issued by him which contain full information of all his administrative measures. The second point was that, although the British Phosphate Commission is by the agreement declared to be free from interference by any of the Governments with the direction, control or management of their business, the Commissioners do, however, consult their Governments in such matters as the recruiting of labour for work on the island.

These points are important, for they show, as does indeed the agreement itself, that the responsibility for the administration of Nauru lies not with Australia alone but with the three Governments concerned. There is all the more reason, therefore, to remedy one patent defect of the present régime—the entire absence of Parliamentary control in any one of the three countries over the joint administration.

THE LAW OF PEACE

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In the first volume of this Year Book a writer on "The League of Nations and the Laws of War" after maintaining that in the past the preoccupation of writers and statesmen with the laws of war had been a real obstacle to the progress of international law, urged that it is only by the development of the law of peace that a stable system can be built up by the League of Nations.[1] A recently published work by Professor Redslob foretells that the twentieth century will be the century of justice.[2] We re-echo Professor Redslob's hope, and agree that attention should be more fully paid to the development of those rules which guide and govern the action of States in their normal pacific relations, for it is by the more complete elucidation and acceptance of those rules that the way can be prepared for the settlement of international differences by arbitration or by judicial decisions on the basis of justice. How varied are the topics which come under the heading of "Peace," and what great issues they involve, can be seen in a recently published work which makes a great contribution towards that development which the writer first referred to so much desired.[3]

Two years ago we reviewed the first published portion of M. Fauchille's great treatise on international law which dealt with war and neutrality.[4] The volume contained nearly 1100 pages; the first portion of the volume on peace is of a similar length and there is another portion still to come. If the laws of war and neutrality required special reconsideration owing to

[1] *British Year Book of International Law*, 1920–21, p. 109.

[2] *Histoire des grands principes de droit des gens.* 1923. For review see below, p. 192.

[3] Paul Fauchille: *Traité de droit international public*, Tome 1, Première partie. *Paix*, 1922. Paris: Librairie Arthur Rousseau. Pp. xii+1058. 35 fr.

[4] 1921–1922, p. 224.

the occurrences of the late war, the laws of peace stand in equal need of restatement by reason of the Treaties of Peace and the establishment of the League of Nations.

The present volume deals with the topic of " persons," *i. e.* the subjects of international law : property, and the other objects of the law of nations are left for the second part of this volume, which we are glad to know is in the press. The book is a great storehouse of learning; the erudition and labour of the author render a detailed criticism impossible, all that we can do is to draw attention to some of its salient features.

One preliminary observation may be permitted of a general character. M. Fauchille appears to have been influenced by, though he has not fully adopted the standpoint of, Dr. Alejandro Alvarez and some other Latin-American writers in their differentiation of the principles of international law applicable to Europe and America. This appears to be a distinctly retrograde movement and one which is contrary to the whole tendency of modern developments. The world is one, and the interdependence of all parts was never more strikingly marked than it is to-day. It may be admitted that there are special principles which the States of the continents of America have accepted as binding between themselves, as tending towards closer co-operation and the friendly settlement of disputes, but this is not to say that there is a separate body of international law governing the relations of the States in the Western Hemisphere and another body of law applicable to the Old World. This was pointed out by a distinguished Brazilian international lawyer in a work published in 1913,[1] in which he pointed out that while Latin-America had its own peculiar problems, these did not constitute a derogation from the general principles of international law, but were to be settled by the application of those principles. Doctrines of a political character stand on a different footing from those of a legal character, and international law cannot fail to take cognisance of them, especially when such declarations of policy as the Monroe Doctrine have, on the whole, made for the maintenance of peace. " Regional understandings " have their place in the scheme of the League of Nations, but the Assembly has shown no desire unduly to multiply them.

The tenth section of the Introduction of M. Fauchille's work,

[1] Sa Vianna : *De la non-existence d'un droit international americain.*

which deals with the transformation of international law, draws attention to the gaps which still exist in it. The movement for codification does not meet with the author's approval; there is not yet a sufficient condition of stability in many parts to warrant the attempt at a general codification. The author is, however, favourable to a movement towards partial codification of certain topics which he indicates.

As regards the future universality of international law, the author points out the difficulties in the way by reason of the profound differences of outlook of peoples in the East and West. He instances the refusal of Japan to accept the conditions of labour proposed by the Labour Conference, and the request by the same Power for a declaration in the Covenant of the League of Nations of the equality of all races. Even amongst the Powers of Christian civilisation there are important divergences of view on many important matters, and the great problem of the future is their co-ordination. It is suggested that each State should clearly enunciate the rules which it considers are of international obligation, so that by a series of compromises and conciliation a veritable universal law of nations may emerge. The work of an international tribunal, as tending towards the end of universality, is only discussed in this part historically; we await the second part of this volume for M. Fauchille's views on the Permanent Court of International Justice. Another topic in the same line of thought is the development of the idea of an international organisation, and we have a sketch of the growth of the doctrine of the balance of power and the Concert of Europe, while, as regards the New World, there is a sketch of the influence of the Monroe Doctrine and the growth of Pan-Americanism. This leads up to an examination of the Covenant of the League of Nations. On this subject the author notes the importance of the default of the United States to ratify the Treaty of Versailles, and the absence of this great Power from membership of the League. So long as the League fails to be world-embracing there is the probability of the continuance of a system of balance of power.

On a question of deep importance to British students of international law, namely, the international status of the British Dominions, M. Fauchille concludes that it appears henceforth to be difficult to doubt that they are to rank as international "persons."

Another development which is dealt with in this book is that of the recognition of a nation as a preliminary to its recognition as a State, a novel situation arising out of the late war. Special recognition was given to the councils of the Czecho-Slavs, the Poles and the Jugo-Slavs. Such recognition could, however, have no effect as regards the parent States. There is an interesting sketch of the Zionist movement preceding the recognition of the claims of the Jews to a "homeland" in Palestine. It is not without importance to note that a modified admission of a similar character was made by the Central Powers. Whilst on the subject of recognition reference may be made to the moot point as to whether admission to the League of Nations of a State entails its recognition as a State *de facto* by all the other members of the League; this is answered by M. Fauchille in the affirmative.

One of the most important and lengthy chapters is that dealing with intervention and the Monroe and Drago Doctrines,[1] which contains some 120 pages. It is also, perhaps, the chapter which will call forth the greatest differences of opinion. The whole subject of intervention, of which an historical sketch appeared in last year's number of this Year Book,[2] is so closely connected with questions of policy that it is not easy to lay down principles of a legal character applicable to it. As regards the history of the Monroe Doctrine, various examples are given of the way in which in the nineteenth century it was used to further a policy of hegemony and imperialism by the United States, especially in Central America, and also of economic imperialism in both Central and South America. The whole chapter is, in fact, more political than legal in character, as is not unnatural in the discussion of such topics as those with which it deals. There is, perhaps, a tendency throughout the whole book to include political considerations more than is usual in English works on international law.

Attention is drawn to the numerous restrictions on sovereignty by the Peace Treaties of 1919, and M. Fauchille does not abandon the doctrine of international servitudes, notwithstanding the *dictum* of the arbitrators in the North Atlantic Fisheries Case and the more emphatic pronouncement by the commission of jurists appointed to examine the Aaland Islands question.

[1] Livre I, chap. viii.

[2] 1922–23, p. 130.

The chapter dealing with individual liberty, protection and inviolability of human beings[1] indicates another important development in the law of nations, and though the forms of expression may sometimes be alien to English juristic thought, the material contained therein is of great value. The international legislation regarding slavery, both black and white, the treatment of coolies, protection of women and children, trade in arms and spirits, morphine, opium and other drugs is set forth, and the efforts of the League of Nations with respect to many of these matters are given, as well as an account of the various technical organs of the League for the protection of humanity. A full account of the provisions for the protection of minorities in recent treaties is followed by the resolutions of the Assembly of the League which emphasise the duties of minorities, which had been neglected in the treaties. The chapter concludes with an account of the work which has been done for the protection of animals by international effort.

Another topic which is of timely interest relates to the question of emigration. In this connection M. Fauchille deals with various important problems which have been raised by the Bolshevist régime in Russia, especially in regard to the large number of Russians who have fled to different countries. Closely connected with emigration are the questions relating to immigration, and the rights and duties of States to foreigners, which are dealt with in a later chapter.[2] Nearly 100 pages are devoted to this important subject, and detailed information as to the immigration laws in force in different countries is given. The volume ends with a chapter of 100 pages on extradition.

We have by no means exhausted the contents of this book, which is impressed with the author's personality throughout. It is one which English students of international law and politics must take into account. The late Mr. Hall drew attention to the influence of continental jurists as reflecting and guiding the drift of public opinion, and a book such as this, in which the author's views are set forth with so much learning and argued with so much skill, enables readers to understand the French point of view on matters in which the English standpoint is not always the same. The study and development of international law are entering on a new era, and the economic factors

[1] Livre III, chap. i.

[2] *Ibid.*, chap. v.

in framing the new law of nations cannot be ignored; they are duly noted in the work under examination. There is a striking sense of the realities of international legal ideas prevalent throughout the whole work, and modern problems are faced and discussed in a manner which, if it does not always command assent, demands respectful consideration.

NOTES

AN ARBITRATION CASE BETWEEN NORWAY AND THE UNITED STATES

It is gratifying to see the so-called Permanent International Arbitration Tribunal at The Hague resuming its activities with the return of peace. Recent recourse to its machinery and processes by the Governments of the United States and Norway for the settlement of a controversy growing out of the events of the late war shows that it has not been entirely forgotten. The controversy, which was disposed of by an award rendered on October 13, 1922,[1] was raised by the action of the United States Shipping Board Emergency Fleet in requisitioning and taking possession in August 1917 of certain ships completed or under construction in American shipbuilding plants, including materials and contracts, which were the property of Norwegian nationals. The Act of Congress under which the requisitions were made provided that "just compensation" should be paid for the requisitions made in pursuance thereof. The Shipping Board reached agreements regarding the amount of compensation to be paid with all the claimants except fifteen (the Christiania group) who demanded a sum which without interest amounted to $13,223,185. About two and a half million dollars had been paid by the claimants to the shipbuilders at different times as the work of construction progressed. The United States was entirely willing to pay the claimants this amount and in addition a sum sufficient to cover the value of the materials in the plants, as represented by the contracts. This total amount was estimated by the United States to be $2,679,220.

No agreement being reached with the claimants, there remained recourse to arbitration. As both Governments were parties to the Hague Convention for the Pacific Settlement of International Disputes and also to an Arbitration Convention signed on April 4, 1908, neither could very well decline the offer of the other to arbitrate the controversy. Accordingly, by a special agreement of June 30, 1921, it was agreed to refer the matter to a Tribunal of three arbitrators, constituted in accordance with the Hague Convention. Each party was to choose an arbitrator and the third was to be designated by the President of the Swiss Confederation. It is hardly necessary to add that each Government selected one of its own nationals as arbitrator and that the President of the Swiss Confederation designated a Swiss national as the third member of the Tribunal.

The special agreement charged the Tribunal with examining and deciding the claims submitted to it "in accordance with the principles of law and equity" and to determine what sum, if any, should be paid in settlement thereof. In connection with the application of the rule thus imposed on the Tribunal there

[1] Text of the Award in the *American Journal of International Law*, April 1923, pp. 362 *et seq.*

was a difference of opinion between the opposing counsel of the two Governments. Counsel for the United States contended that in respect to claims arising out of transactions occurring within the jurisdiction of the United States, such as those involved in the requisitioning of the Norwegian ships, the " principles of law and equity " to be applied were those recognised by the law and jurisprudence of that country. Counsel for the Government of Norway, on the other hand, maintained that in the absence of an express agreement to the contrary the law which must be applied by arbitration tribunals is international law and that such tribunals are not bound by the municipal law of one or the other of the parties. The Tribunal sustained, in the main, the contention of Norway and held that the principles of " law and equity " referred to in the special agreement must be understood to mean the " general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any State." This interpretation as to the law which is applicable in arbitral procedure is in accord with the opinions of the authorities.[1] The Tribunal, however, admitted that it could not ignore the municipal law of the parties, " unless that law was contrary to the principle of the equality of the parties or to the principles of justice which are common to all civilised nations." It could not, therefore, agree with the Norwegian contention that it was entirely free to disregard the municipal law of the United States when that law had been accepted by Norwegian nationals in their dealings with American citizens, even though the law was less favourable to their claims than the law of certain other civilised countries.

Another more or less preliminary question which the Tribunal had to decide was the contention of the United States that there was no requisitioning except of " physical property," and that the word " contract " referred to in a letter of the Shipping Board dated August 3, 1917, addressed to the shipyards, in which it was stated that " not only ships and materials but also contracts, plans and specifications " were requisitioned, had reference only to " commitments for material." [2] The Tribunal rejected the American interpretation and held that the contracts under which the ships were being or were to be constructed had both in law and in fact been taken by the United States, whatever may have been the intentions of the Shipping Board. It also took occasion to criticise the action of the United States authorities in retaining, without restoring the ships, the two and a half million dollars that had been paid to the shipbuilders by the claimants. This was " not only contrary to international law, but also to the municipal law of the United States." This money should have been refunded to the claimants at the time of the requisitioning of the ships, and there was no excuse for waiting until 1919 to make an assessment thereof.

The principal question which the Tribunal was called on to decide was the amount of compensation to which the claimants were entitled, and it was, of course, the most difficult. At the outset, it rejected the contention of the United States that no compensation should be allowed over and above the sum offered by the Shipping Board, that is, $2,679,220. Just compensation, it held, implies a complete restitution of the *status quo ante* based, not upon future gains of the United States or other Powers, but upon the loss of profits of the Nor-

[1] The Tribunal quoted Lammasch, *Die Rechtskraft Internationaler Schiedsprüche* (p. 37), and Scott : *Hague Court Reports* (p. xxi), in support of its opinion.

[2] Case of the United States, Appendix, pp. 212 *et seq.*

wegian owners as compared with other owners of similar property. The contention of the United States that there could be no liability and consequently no right of compensation when the contract had been destroyed or rendered void in consequence of *force majeure* or the " restraint of princes," said the Tribunal, might be invoked in disputes between private persons, but it could not be invoked by the United States against Norway as a bar to the claim of Norway. International law and justice, the Tribunal added, are based upon the principle of equality between States, and no State could in the exercise of its power of eminent domain discriminate against the nationals of another State. This the United States had done in the present case. The Shipping Board by its neglect to settle accounts and return the ships to its original owners, at least after the end of June 1919, had rendered the United States liable for the " damaging action " of its officials and agents.

As to the amount of compensation to which the claimants were entitled, the United States admitted that it should be " just " and that it should be based on the net value of the property taken, at the time it was requisitioned, but not upon any speculative values which shipping contracts may have acquired in consequence of the existing crisis produced by submarine warfare. This view of the matter the Tribunal does not, however, appear to have adopted. As to the allowance of interest, the special agreement had provided that any amount awarded should bear interest at the rate of six per cent. per annum from the *date of the award* until the date of payment. The Tribunal went further and allowed interest from October 6, 1917, on the ground that it was a case of expropriation and that the United States had enjoyed the use and profits of the claimants' property, including the progress payments made on the contracts, for a period of five years, though it rejected the claim of the owners for compound interest calculated every six months. The total amount of the award with interest was fixed at $12,239,852·47.

The American arbitrator dissented, refused to attend the announcement of the award, and sent a letter to the Secretary-General of the Permanent Court of Arbitration saying that he had refused to be present because the other arbitrators had " disregarded the terms of submission and exceeded the authority conferred by the special agreement," and he did not wish to appear as acquiescing in the decision by his presence and silence.[1] The dissent of the American arbitrator recalls the similar action of Sir Alexander Cockburn in the Alabama Claims case, of the Japanese arbitrator in the Japanese house tax case, of the two Canadian arbitrators in the Alaska boundary case, and of both the American and Mexican arbitrators in the Rio Grande boundary case of 1911. The dissent will doubtless strengthen the opinion of those who hold that no national of a litigating State should be appointed as an arbitrator in a case in which his own country is a party.[2]

[1] Text of the letter in *American Journal of International Law*, April 1923, p. 399. Under an interpretation of the Hague Convention he was denied the right to file a dissenting opinion, the special agreement having made no express provision therefor. The American agent made a statement in open court that he deemed it his duty on behalf of the United States to reserve all its rights " arising out of the plain and manifest departure of the award from the terms of submission and from the ' essential error ' by which it is invalidated."

[2] Compare the observations of Ralston in *American Journal of International Law*, April 1923, p. 327.

The amount of compensation awarded was the subject of considerable dissatisfaction in the United States, where it was generally considered to be excessive, based, as it appears to have been, on values more or less artificial and speculative. Payment, however, was duly made in accordance with the terms of the special agreement, which provided that "the decision should be accepted as final and binding upon the two Governments." But the Secretary of State in his letter to the Norwegian Minister, transmitting a draft for the sum awarded, took occasion to say that the American Government "could not accept certain apparent bases of the award as being declaratory of the principles of international law or as hereafter binding upon this Government as a precedent." He took exception particularly to the decision of the Tribunal which seemed to imply that the requisitioning power of a belligerent is limited and governed by a different test when the property taken belongs to the nationals of a neutral State. The nationality of the owners of private property situated in a belligerent State, when just compensation is made, he said, did not affect the power of requisition. Due process of law applied equally and without discrimination to nationals and neutrals alike. He also expressed regret that the award failed to give a satisfactory explanation of the manner in which the Tribunal had arrived at the amount awarded. While purporting to award compensation on the basis of the fair market value of the property taken, it had omitted discussion of the particular circumstance of the different claims or of the methods of calculation, or of the reasons for determining upon the amounts in each case. The failure to do this was inconsistent with Article 79 of the Hague Convention, which requires arbitral tribunals constituted in pursuance thereof to give the reasons on which their awards are based. Nevertheless, while considering it the duty of the United States to point out that it could not consider the award as possessing "an authoritative character as a precedent," in executing the award it was giving proof of its respect for arbitral awards and again acknowledging its devotion to arbitral settlements, even in the face of a decision which proclaimed certain theories of law that it could not accept.[1]

The agreement of the two Governments to settle the dispute by recourse to the machinery and processes created by the Hague Convention and the promptness with which the losing party executed an award, the justice, if not the validity, of which it denied, may be set down as another triumph for international arbitration. Nevertheless, the dissatisfaction and virtual protest to which it gave rise must be a matter of deep regret to the advocates of arbitration, regardless of the merits of the case. For this reason the cause of arbitration has undoubtedly been injured, though it is to be hoped that the injury will be neither serious nor permanent.

James W. Garner.

THE CLAIM FOR PENSIONS AND ALLOWANCES UNDER THE TREATY OF VERSAILLES

It may be of interest, in view of a statement by General Smuts which appeared in the British press on February 7, 1923, to consider from a purely

[1] Text of the letter in *American Journal of International Law*, April 1923, pp. 287–289.

legal point of view the question whether the Governments of the Entente and of the United States were justified in including a claim for war pensions and separation allowances in the amount of reparations to be paid by Germany under the Treaty of Versailles.

The point at issue, it will be remembered, is not whether the terms of the Armistice, which in this matter were perhaps rather ambiguously worded, justified the inclusion, but whether the inclusion was or was not justified under the reservation made by the Allied Powers shortly before the signature of the Armistice, as to the meaning of one of President Wilson's conditions for the cessation of hostilities. This reservation, which was accepted both by the Germans and by President Wilson, ran as follows :

> " Compensation will be made by Germany for *all damages done to the civilian population of the Allies and to their property by the aggression of Germany by land, sea and from the air.*"

The question at issue is whether this reservation allows a claim to be made for :

(*a*) a wound or disablement pension granted to a soldier;
(*b*) a separation allowance allowed to the wife or dependent of a soldier, and
(*c*) the pension of a widow or dependent of a soldier whose death occurs on active service.

General Smuts' opinion will be found given in full in an appendix; and it is right to recall here, as on all other occasions on which this question is discussed, that it was his professional opinion as a lawyer which was sought and not his advice as a statesman.

Before proceeding to examine the claim in detail let us look at the language of the reservation itself—" all damages done to the civilian population and their property," the word " damages " being, of course, used in the sense of harm, destruction or injury and not in the legal sense of compensation awarded for a wrong done; it will perhaps, therefore, conduce to clearness if we use the word " injury " instead of the word " damages."

The first point that strikes a reader is that we have here two heads of injury and not one; not simply injury to the civilian population but injury to the civilian population *and* to their property. This is important. If the reservation had spoken of injury to the civilian population without more, it would then have been possible to argue that you could include under the words " all damages done to the civilian population," injury of every kind whether to person, property or otherwise; but we have here two heads of injury and a distinction drawn between injury to the civilian population and injury to its property. What, therefore, must the first head (" damages done to the civilian population ") mean? Surely it must be limited to injury done to their persons, " persons " being the natural antithesis of " property "; it clearly does not include injuries done to their property, as these are a separate head of claim, and it could hardly be suggested that the phrase includes injury of a " moral and intellectual " character such as an injury to reputation. The language taken by itself thus suggests forcibly that two classes of injuries, namely injuries to the person and injuries to property, and no others, are included.

Now, according to General Smuts' opinion, it would appear that the case for including claims for pensions and allowances depends on the following arguments: (*a*) that in the case of a pension for a soldier's wound or disablement that wound or disablement is ultimately damage done to the civilian population; (*b*) that in the case of a separation allowance the removal of the husband from the home is damage to the civilian population; and (*c*) that in the case of a pension to a widow or dependent the death of the soldier is a damage to the civilian population. Before examining these arguments in detail, it should be observed that the case is not put upon the fact that the British Government has assumed liability for pensions and allowances and that therefore the resulting charge upon the Budget, which has to be met by the taxpayer (*i. e.* speaking broadly, the civilian population), is damage done to the civilian population or its property; this, indeed, would be a dangerous argument, as it would lead to the conclusion that the whole of the costs of the war were a damage to the civilian population. The liability of the British Government for pensions and allowances is relevant only as supplying a rough measure of the amount of damages and for no other purpose.

Turning now to the contentions actually advanced, we find a radical difference between the basis of the argument in the case of disability pensions on the one hand and of separation allowances and dependents' pensions on the other. In the case of disability pensions it is the man himself who is considered as having suffered injury, while in the other cases the injury claimed for is that done to the dependent. In the case of the disability pensions it is argued that the soldier, after his discharge as unfit, rejoins the civilian population, and as he cannot in the future in whole or in part earn his own livelihood he is suffering damage as a member of the civilian population. It is then the ex-soldier himself who is regarded as having suffered damage. The answer to this line of argument would appear to be clear. The words to be construed are "damages done to the civilian population." But the injury which a soldier suffers is done to him while he is a soldier and (probably) *qua* soldier, and not while he is a civilian. The pension which he gets from the Government is given to him in respect of his claim as a soldier, and not of any supposed claim as a member of the civilian population. If his own Government recognised his claim as that of a civilian his pension would have to be nicely calculated with a view to his actual circumstances in civilian life.

Obviously, as a matter of common sense, the phrase "damages done to" persons who possess a particular quality, such as old age, or the status of a civilian, refers to injury inflicted on persons who at the time of the infliction possess that quality and, it may be, inflicted on them as possessing that quality. Otherwise, in the case we are considering, inasmuch as all soldiers, if they live long enough, end by being merged in the civilian population, the expression "damages done to the civilian population" means "damages done to all persons who do not die as soldiers." If I say "I will pay for damages done to old men and women," does that involve me in a liability for damage done to children, the effects of whose injury persists throughout life into old age? On the other hand, if the house in London of a soldier on active service were destroyed by an aerial bomb it might well be that the loss of the house would be properly included in the expression "damages done to the property of the civilian population."

So much for pensions allowed to soldiers themselves.

As to separation allowances and pensions to dependents the argument is different. The contention here is that the dependent, while the bread-winner was serving or by reason of his death, was deprived of the advantage of his support and therefore suffered damage as a member of the civilian population. But for the dependent to make good such a claim as one for damage done to the "civilian population and to their property" we have seen that the injury inflicted must either have been an injury to the person of the claimant, which in this case it plainly is not, or an injury to the claimant's property, and how can it be said that a dependent has any "property" in the earnings of the person on whom he or she depends? If this view is not accepted it would seem to follow that anyone who derived advantage from the labour of a man called up as a soldier might put in a claim for the economic loss entailed by his calling up. On this basis a man's employer would be entitled to make a claim for the loss of the benefit of his labour, and the civilian population as a whole could make a claim for the loss of the economic product resulting from the removal of a contributor. This, however, would clearly be to go much too far, as it would make the disputed words throw upon Germany the whole of the economic loss to the Allies resulting from the War.

The fact that the particular loss of the dependent in these cases is attenuated by a Government contribution, whereas the Government cannot, or at any rate has not endeavoured to, mitigate the general economic loss, is, as already stated, irrelevant. It is not perhaps without significance to recall that the common law never recognised any claim for damages by the dependent of a person killed by the tortious act of another, and that it needed Lord Campbell's Act to introduce a right of this description.

Again, without going into the technical doctrines of English law as to "remoteness" of damages, it might well be contended, as a matter of construction, that the claim in respect of reparation allowances does not fall within the language used. The removal of the bread-winner from the home is not an injury "done by" (not, be it observed, "resulting from") "the aggression of Germany by land, sea or air." The calling up of men for military service—and in Anglo-Saxon countries the institution of compulsory service—was an act of their own Government. This, indeed, would bring us back by another route to the point already made: if the removal of the bread-winner was an injury "done by" German aggression, every economic disadvantage suffered during the war by the civilian population, being equally the consequence of German aggression, ought to be classed as an injury for which Germany bound herself to pay. Lodging-house keepers at Cromer could claim damages for the diversion of their guests to Torquay.

Finally, it should be noted that the disputed words speak of damages done to the civilian population by the aggression of Germany "by land, sea and from the air"—these latter being words which the opinion of General Smuts does not discuss. But unless these words are to be dismissed as mere rhetorical surplusage, they strongly confirm the suggestion that what we have to deal with is actual physical destruction, by land in the devastated regions of France and elsewhere, by sea in the torpedoing of merchant ships the property of civilians and the killing of merchant seamen, and from the air by the dropping of bombs upon centres of civilian population. Nothing, in fact,

during the course of the war had aroused more anger than the peril and loss to which, contrary to the experience of former wars, civilians were exposed, and it was in this respect that Germany was to be bound to make compensation. This surely is a plain common-sense construction of the disputed words.

Whatever may have been the true construction, a lawyer cannot help noting with regret that President Wilson's final decision of the matter [1] does not appear to have been based upon any accurate process of reasoning :

> " We explained to him that we could not find a single lawyer in the American Delegation who would give an opinion in favour of giving pensions. All the logic was against it. ' Logic ! Logic ! ' exclaimed the President, ' I don't give a damn for logic ! I am going to give pensions.' "
>
> " O."

APPENDIX

Note on Reparation [2]

" The extent to which reparation can be claimed from Germany depends in the main on the meaning of the last reservation made by the Allies in their note to President Wilson, November 1918. That reservation was agreed to by President Wilson and accepted by the German Government in the Armistice negotiations and was in the following terms :

" ' Further, in the conditions of peace laid down in his address to Congress on January 8, 1918, the President declared that invaded territories must be restored as well as evacuated and made free. The Allied Governments feel that no doubt ought to be allowed to exist as to what the provision implies. By it they understand that compensation will be made by Germany for all damage done to the civilian population of the Allies and to their property by the aggression of Germany, by land, by sea and from the air.'

" In this reservation, a careful distinction must be made between the quotation from the President which refers to the evacuation and restoration of the invaded territories and the implication which the Allies find in that quotation and from which they proceed to enunciate the principle of general applicability. The Allies found in the President's provision for the restoration of the invaded territories a general principle of far-reaching scope. This principle is that of compensation for all damage to the civilian population of the Allies, in their persons or property, which results from the German aggression, and whether done on land, on sea, or from the air. By accepting this comprehensive principle (as the German Government did) they acknowledged their liability for all damage to the civilian population or their property, wherever or however arising, so long as it was the result of German aggression. The President's limitation to restoration of the invaded territories only of some of the Allies was clearly abandoned.

" The next question is how to understand the phrase ' civilian population ' in the above reservation, and it can be most conveniently answered by an illustration. A shopkeeper in a village in Northern France lost his shop through enemy bombardment and was himself badly wounded. He would be entitled,

[1] See Mr. Lamont's account on page 272 of *What Really Happened at Paris*, Hodder & Stoughton, 1921.

[2] General Smuts' opinion is quoted from Baruch : *The Making of the Reparation and Economic Sections of the Treaty.*

as one of the civilian population, to compensation for the loss of his property, and for his personal disablement. He subsequently recovered completely, was called up for military service, and after being badly wounded and spending some time in the hospitals, was discharged as permanently unfit. The expense he was to the French Government during this period as a soldier (his pay and maintenance, his uniform, rifle, ammunition, his keep in the hospital, etc.) was not damage to a civilian, but military loss to his Government, and it is therefore arguable that the French Government cannot recover compensation for such expense under the above reservation. His wife, however, was during this period deprived of her bread-winner, and she therefore suffered damage as a member of the civilian population, for which she would be entitled to compensation. In other words, the separation allowances paid to her and her children during the period by the French Government would have to be made good by the German Government, as the compensation which the allowances represented was their liability. After the soldier's discharge as unfit, he rejoins the civilian population, and as in the future he cannot (in whole or in part) earn his own livelihood, he is suffering damage as a member of the civilian population, for which the German Government are again liable to make compensation. In other words, his pension for disablement which he draws from the French Government is really a liability of the German Government, which they must, under the above reservation, make good to the French Government. It could not be argued that as he was disabled while a soldier he does not suffer damage as a civilian after his discharge, and his pension is intended to make good this damage, and is therefore a liability of the German Government. If he had been killed in active service, his wife as a civilian would have been totally deprived of her bread-winner, and would be entitled to compensation. In other words, the pension she would draw from the French Government would really be a liability of the German Government under the above reservation, and would have to be made good by them to the French Government.

"The plain common-sense construction of the reservation therefore leads to the conclusion that, while direct war expenditure (such as the pay and equipment of soldiers, the cost of rifles, guns and ordnance, and all similar expenditures) could perhaps not be recovered from the Germans, yet disablement pensions to discharged soldiers or pensions to widows and orphans, or separation allowances paid to their wives and children during the period of their military service, are all items representing compensation to members of the civilian population for damage sustained by them for which the German Government are liable. What was spent by the Allied Governments on the soldier himself, or on the mechanical appliances of war, might perhaps not be recoverable from the German Government under the reservation, as not being in any plain and direct sense damage to the civilian population. But what was, or is, spent on the citizen before he became a soldier or at any time on his family, represents compensation for damage done to civilians and must be made good by the German Government under any fair interpretation of the above reservation. This includes all war pensions and separation allowances, which the German Government are liable to make good, in addition to reparation or compensation for all damage done to property of the Allied peoples.

"(Signed) J. C. SMUTS."

Paris, March 31, 1919.

THE CANADIAN-AMERICAN HALIBUT FISHERIES TREATY

Some of the difficulties attendant upon the development of the international status of the British Self-Governing Dominions are brought to light in the circumstances surrounding the negotiation of the treaty between Canada and the United States for the regulation of the halibut fisheries on the Pacific Coast of North America. In the past when a Dominion has negotiated a separate commercial treaty with a foreign Power the British Ambassador accredited to such Power has signed the treaty in association with the Dominion representative. This procedure was adopted as late as 1921 in the Trade Agreement between Canada and France. Informal agreements such as that concluded between Canada and the United States in 1911 form no exception to this rule, because, as Professor Berriedale Keith has recently pointed out :

> " such agreements are not in the international sense treaties; most of all, they impose no obligation on the Imperial Government and a breach of them is no ground for diplomatic representations." [1]

But in the course of the preliminary correspondence relating to the signing of the Halibut Treaty the Governor-General of Canada telegraphed to the British Ambassador at Washington on February 21, 1923 :—

> " My Ministers are of opinion that as regards Canada the signature of Mr. Lapointe [the Canadian Minister of Marine] will be sufficient, and that it will not be necessary for you to sign as well."

To this the Ambassador replied on February 23rd :—

> " I have been instructed by His Majesty's Government to sign the Treaty in association with Mr. Lapointe." [2]

But in consequence of further representations by the Canadian Government to the effect that the treaty affected solely the United States and Canada, the Imperial Government withdrew from its position, and the treaty was signed on March 2nd by Mr. Hughes, the United States Secretary of State, and Mr. Lapointe. Thus for the first time a treaty was not only negotiated by a Dominion representative alone but also signed by him alone.

The matter, however, did not end there, for the United States Senate ratified the treaty subject to the understanding that :

> " none of the nationals or inhabitants on boats or vessels of any other part of Great Britain (*sic*) shall engage in the halibut fishery contrary to the provisions of the Treaty."

And it is worthy of note that both the President of the United States and the Secretary of State referred to the treaty as being concluded not with Canada but with Great Britain. The rider of the United States Senate prevents the treaty from being regarded as concerning Canada alone, and the concurrence of the Imperial Government and of the other Dominions would be required for its ratification. No steps have been taken to obtain such concurrence and the treaty remains " in a state of suspended animation."

[1] Letter to *The Times*, March 19, 1923.

[2] A detailed account of the correspondence is given in " Empire Foreign Policy," by J. A. R. Marriott, *Fortnightly Review*, May 1923.

Meanwhile an important question is involved which apparently has not been solved. The British Prime Minister on March 8th, in reply to a question in the House of Commons, stated that :—

> " The plenipotentiary who signs a treaty does so as the representative of the King, by whom his full powers are issued, and the Canadian Minister acted in that capacity on the present occasion."

He did not, however, say on whose advice and authority the King issued full powers. Was it on the advice of his Canadian or of his British Ministers ?

It will be recalled that at the Peace Conference the Dominion representatives were successful in insisting that they should separately and directly advise the King to issue to them their separate authority to sign the various treaties of peace. Accordingly the opinion is widely held both in Canada and South Africa that full powers were given to Mr. Lapointe on the direct authority of the Canadian Ministry. On the other hand, Professor Berriedale Keith in the letter mentioned says :—

> " It cannot too clearly be understood that full powers can be issued by the King only on the advice and responsibility of the Imperial Government. His Majesty cannot sign such a document save on such advice, and it is wholly impossible that full powers could be issued by His Majesty in any other way."

If the treaty were regarded as embracing the whole Empire and not concerned with Canada alone—even before the rider of the United States Senate was introduced—then Professor Berriedale Keith's statement appears to be constitutionally unassailable. But was the treaty so regarded ? In the absence of any papers laid before Parliament [1] it is impossible to say. Moreover, who is to decide whether a treaty concerns one Dominion only or is of Imperial concern ?

These and other questions demand an answer and emphasise the need of an Imperial Conference such as that foreshadowed in the resolution of the Imperial War Conference of 1917 to consider " the readjustment of the constitutional relations of the component parts of the Empire."

Malcolm M. Lewis.

ACQUISITION AND LOSS OF NATIONALITY BY MARRIAGE

New Legislation in the United States

By an Act of Congress, approved on September 22nd last, important changes were made in the law of the United States regarding the status of alien women who marry American citizens, and of American women who marry aliens. The Act provides that any woman who marries a citizen of the United States or any woman whose husband is naturalised after the passage of the Act shall not acquire citizenship of the United States by reason of such marriage or naturalisation. She may, however, if eligible to citizenship, be naturalised, and the usual requirements are relaxed in her behalf by waiving the necessity of a

[1] It appears from the Prime Minister's reply to a question on March 8th that the Government does not intend to lay the papers connected with the Treaty on the table of the House.

declaration of intention and by insisting on but one year's residence instead of five, the period required of other aliens. Conversely, the law enacts that no woman citizen shall lose her American citizenship by reason of her marriage to an alien, unless the husband is ineligible to citizenship, in which case she ceases to be an American citizen and cannot be naturalised during the continuance of the marital status. The Act repeals the provision of the law of 1855, which declared that an alien woman married to a citizen of the United States acquired thereby American citizenship, and likewise the provision of the Expatriation Act of 1907 by which an American woman who married a foreigner acquired the nationality of her husband.[1]

By the new Act, therefore, the United States reverts to the ancient common law principle which prevailed in England before the passage of the Act of 1844,[2] and in the United States before the enactment of the law of 1855 referred to above. According to that principle marriage had no effect upon the nationality of a woman; an alien woman who married a citizen remained an alien still, and an American or English woman who married an alien did not lose her citizenship by reason of the marriage. Likewise under the old rule a married woman could not be naturalised so long as her husband was a citizen or subject of a foreign State. But the recent Act of Congress abolishes this rule and allows any alien married woman who is otherwise eligible to naturalisation to become an American citizen by naturalisation regardless of the foreign nationality or wishes of the husband. Thus the identity of the husband and wife, which the Supreme Court in 1916 declared to be " an ancient principle of American jurisprudence," has been replaced by a new rule which permits them to possess different nationalities. The reversion to the ancient rule in respect to the effect of marriage upon the nationality of women puts the legislation of the United States out of harmony with that of the vast majority of other countries and thereby introduces confusion and conflict where uniformity is highly desirable.

First of all, it is certain to increase the number of persons who will be " afflicted " with the status of double nationality and to multiply the controversies which inevitably result therefrom. Thus a woman citizen of the United States who marries an English husband will remain an American citizen, but by British law she will be a British subject.[3] Conversely, an English woman who marries an American husband will according to the new Act of Congress

[1] The constitutionality of this section of the law of 1907, which automatically operated to expatriate against her will an American woman who married an alien even when she and her husband continued to reside in the United States, was attacked, but was upheld by the Supreme Court in the case of *Mackenzie* v. *Hare*, 239 U.S. 299 (1916). Of the policy of merging the identity of the wife with that of the husband, the Court said : ". . . . The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental nor arbitrary and worked in many instances for her protection. There has been, it is true, much relaxation of it, but in its retention as in its origin it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity, and give dominance to the husband. It has purpose, if not necessity, in purely domestic policy; it has greater purpose and, it may be, necessity, in international policy. And this was the dictate of the Act in controversy."

[2] 7 and 8 Vict. 154, c. 66.

[3] British Nationality and Status of Aliens Act, 1914, Sec. 10.

remain a British subject, but under British law she will lose her British nationality. She will, therefore, be *heimatlos* or *Staatlos*—a woman without a country. It is true that under the recent law she could be naturalised in the United States after one year's residence, but if she is residing abroad she cannot obtain the necessary passport for entering the United States for the purpose of fulfilling the residence requirement. An actual case of this kind recently occurred. An official in the American Consular service abroad married an English woman, and when the husband sought to return to the United States with his wife she was denied an American passport because she had not acquired American citizenship by her marriage, and she was refused a British passport for the reason that under English law she had ceased to be a British subject. Thus her right to become a citizen of the United States was clearly abridged notwithstanding the affirmation in the Act of 1922 that " the right of any woman to become a naturalised citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman."

The status of an American woman who marries a foreigner who is ineligible to naturalisation under the existing laws of the United States, for example a Japanese, a Chinese or other person of non-Caucasian race,[1] is worse than before, for under the new law she is ineligible to citizenship by naturalisation during the continuance of the marital status. Under the Act of 1907 such a woman might " resume " her American citizenship after the termination of the marital status by registering with an American Consul or by returning to and residing in the United States. But that provision of the law is now repealed, from which it would appear that the only way by which she could resume her American citizenship would be through the regular process of naturalisation, which requires five years' residence. The adoption of a new rule so widely at variance with the legislation of other countries and so likely to give rise to questions of double or ambiguous nationality will doubtless prove a source of many legal controversies concerning the descent of property—all the more so because of the large number of marriages between wealthy Americans and foreign spouses. Controversies regarding the status of children born of marriages between Americans and foreigners are also by no means inconceivable, particularly because of the repeal of the provision of the Act of 1907 relating to the resumption of American citizenship by women upon the termination of the marital relation.

The old rule by which an American woman automatically lost her citizenship by marriage to an alien did undoubtedly result in hardships. Upon the outbreak of the World War many American women who had married aliens found themselves in the category of enemies of their own country and their property liable to sequestration. It was the women of the United States who initiated the movement for a modification of the law, and having acquired the right of suffrage it was not difficult for them to bring the necessary pressure to bear upon both political parties to obtain a pronouncement in their national platforms of 1920 in favour of the repeal of the law under which American women lost their citizenship upon marrying aliens. The passage of the new law of 1922 was a fulfilment of the Republican promise. The law safeguards

[1] See the recent case of *Ozawa* v. *The United States* decided by the Supreme Court on November 13, 1922, where it was held that persons of the Japanese race are ineligible to naturalisation under the existing laws of the United States.

their citizenship but, as I have endeavoured to show, it is bound to cause much confusion, multiply controversies concerning the nationality of women, raise difficult questions in respect to the descent of property and lead to individual hardships unforeseen by its sponsors.

JAMES W. GARNER.

PERMANENT COURT OF INTERNATIONAL JUSTICE: ADVISORY OPINIONS GIVEN IN 1922–1923 [1]

THE Permanent Court of International Justice, in addition to its primary function of deciding those disputes between States which are submitted to it by agreement between the parties, or in virtue of some treaty provision or of acceptance by the parties of obligatory jurisdiction by the Court, has under Article 14 of the Covenant of the League of Nations the power to give "an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly" of the League.

The year 1922 did not bring any litigious business to the Court, but its regular session was occupied in advising upon three questions referred to it by the Council. All three related to the interpretation of Part XIII. of the Treaty of Versailles, which establishes the International Labour Organisation, and not to any problem which was immediately before the Council. The action taken by the Council accordingly throws an interesting light upon the relations between the Council and the Court. One question, relating to the nomination of workpeople's delegates to the International Labour Conferences, was submitted at the request of the Labour Organisation. The other two were referred on the proposal of France. The Labour Organisation has no direct access to the Court and the Court's Statute does not allow it to give advisory opinions at the request of individual States. The three cases would, therefore, appear to show that the Council will use its access to the Court for the purpose of enabling the Labour Organisation to obtain guidance from the Court, and also that in proper cases the Council will adopt as its own, and put to the Court, questions as to the interpretation of treaty provisions affecting the League which are raised by a member; but they furnish no ground for supposing that the Council would act as intermediary for obtaining the Court's advice upon questions raised by a State which did not directly concern the League.

The Court's answers would appear not to be formally binding interpretations of the treaty, such as would have been obtained by recourse to the Court under Article 423. They are rather advisory opinions given for the guidance of the competent organs of the League.

At the commencement of its session, the Court announced that it would hear any State or international organisation which notified its desire to address the Court upon any of the questions before it. This action was taken under the Rules of Court applicable to Advisory Opinions and does not imply any

[1] The Court publishes a *Collection of Advisory Opinions* (Series B of the publications of the Court, published at Leyden by A. W. Sijthoff).

A verbatim report of part of the proceedings before the Court in the cases here discussed and the texts of the opinions have been published in the *Official Bulletin* of the International Labour Office (see Vol. VI. Nos. 3, 4, 7, 8, 9, 10 and 11).

derogation from the rule that only States or members of the League of Nations can be parties in cases before the Court.[1]

Article 389, *Paragraph* 3, *of the Treaty of Versailles.*

For an account of the difficulties which the application of this paragraph has occasioned, reference must be made to M. Albert Thomas' speech to the Court.[2] The Governing Body and Conference of the International Labour Organisation are unique among official international gatherings in being composed, not merely of delegates who speak in the name of their Governments, but also of non-Government delegates who are nominated by their Governments to represent the interests of employers and workpeople respectively, and who possess absolute freedom in their utterances and votes. Article 389, paragraph 3, requires the Governments to nominate to the International Labour Conference :

> " non-Government delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries."

A subsequent paragraph (7) gives the Conference the power to refuse, by a two-thirds vote of the delegates present:

> " to admit any Delegate or adviser [*i. e.* non-Government delegate or adviser] whom it deems not to have been nominated in accordance with this Article."

The recourse to the Court was occasioned by the action of the Netherlands Government in nominating to the 1921 session of the Conference workpeople's delegates and advisers chosen in agreement with three organisations which together represent a majority of the organised labour of the country, and after consultation with but without the agreement of the largest Trade Union. The nominations were impugned on the ground that paragraph 3 should be read as obliging a Government to nominate in agreement with the organisation which is singly the most representative, the use of the plural " organisations " in the text being explained by the fact that the two cases of workpeople's and employers' delegates are covered by it, and that the dissenting Union was the most representative single workpeople's organisation in the Netherlands. The Conference admitted the Netherlands delegate and advisers on the understanding that the Court should be asked to interpret Article 389. Subsequently, the Governing Body of the Labour Office and the Council formulated the question for the Court as the question whether the Netherlands delegate had been properly appointed, but this formulation was adopted merely as a method of raising the general problem of interpretation upon a concrete set of facts.

After considering memoranda from various quarters and hearing oral statements on behalf of the British and Netherlands Governments, the International Federation of Trade Unions, the International Federation of Christian Trade Unions, and the International Labour Office, the Court unanimously advised, on July 31, 1922, that the Netherlands delegate was properly appointed, and interpreted Article 389 so far as was necessary for this decision. As was to

[1] Article 73 of the Rules of Court : Article 34 of the Court's Statute.
[2] International Labour Office, *Official Bulletin*, Vol. VI. No. 3, p. 72.

be expected, the Court did not attempt to discuss various possible applications of the Article and test their concordance with its provisions. The opinion given appears to have established the following points.

Paragraph 3 of the Article constitutes an obligation by which the members of the Labour Organisation are bound towards one another and subjects them to a limitation in regard to the choice of the non-Government delegates and advisers. The limitation is that the persons nominated shall have been chosen in agreement with the organisations most representative of employers or workpeople. This does not mean the single most representative organisation in either case. On the contrary, the aim of each Government must be " an agreement with all the most representative organisations." What these organisations are, is a question to be decided by each Government in the light of the circumstances existing in the particular country at the time when the choice falls to be made. Membership is an important factor but not the only factor. The Government's decision may be reviewed under paragraph 7 and admission be refused to its nominees on any grounds, either of fact or law, which satisfy the Labour Conference that the nominations have not been made in accordance with Article 389. Failure to secure agreement with all the organisations which should be consulted does not make a nomination impossible. The attainment of complete agreement is an ideal difficult to realise and which cannot be considered as the normal case contemplated by paragraph 3. What is required of the Governments is " that they should do their best to effect an agreement which in the circumstances may be regarded as the best for the purpose of ensuring the representation of the workers of the country."

Competence of International Labour Organisation.

Two questions as to the competence of the Labour Organisation were submitted: (*a*) whether this competence " extends to international regulation of the conditions of labour of persons employed in agriculture "; (*b*) whether it includes " examination of proposals for the organisation and development of methods of agricultural production and of other questions of a like character."

The Court, on August 12, 1922, answered the first question in the affirmative, M. Weiss (French) and M. Negulesco (Roumanian) dissenting, but without stating the reasons for their dissent; it answered the second question unanimously in the negative. On both questions the Court considered a variety of memoranda; on the first it heard oral statements on behalf of the French, British, Portuguese and Hungarian Governments, the International Agricultural Commission, the International Labour Office and the International Federation of Trade Unions; on the second question the Court heard the French Government and the International Labour Organisation.

The case for exclusion of agricultural labour from the competence of the Organisation,[1] may be said to have been based mainly upon two arguments: the alleged practical inapplicability to agriculture of some of the principles of Part XIII. of the Treaty, from which it was inferred that that Part could not be held to apply to agriculture in the absence of an express mention, and the employment in the French text of various Articles (especially Article 393 and Article 427) of the word " industrie " or " industriel," which, as ordinarily used,

[1] The Governments which made submissions to the Court were divided as follows: against the competence, France and Hungary; for, Britain, Italy and Sweden.

was stated not to include agriculture. The Court rejected both these arguments. It considered that the word " industrie " or " industriel," like the equivalent English word " industry " or " industrial," could include agriculture where this was required by its context. The objection founded on this word being removed, the language of the treaty taken as a whole is found to be absolutely comprehensive and to leave no doubt that the provisions of Part XIII. are intended to apply to agricultural labour.

The second question of competence gave rise to no dispute, except on the point whether, in fact, past proceedings of the Labour Organisation did or did not show that it was arrogating competence to itself, a point with which the Court's opinion did not deal. There was no submission from any quarter to the effect that the Organisation was competent to deal with questions of production as such. The Court left on one side the reference to " other questions of a like character," stating that it could not undertake to say what such questions might be, and it guarded itself against misinterpretation of its negative answer to the main question by stating :

> " It is evident that the Organisation cannot be excluded from dealing with the matters specifically committed to it by the Treaty on the ground that this may involve in some aspects the consideration of the means or methods of production, or the effects which the proposed measures would have upon production."

INTERPRETATION OF ARTICLE 15, PARAGRAPH 8, OF THE COVENANT OF THE LEAGUE OF NATIONS. MATTERS SOLELY WITHIN THE JURISDICTION OF A STATE

The recent decision of the Permanent Court of International Justice at The Hague on the preliminary point arising in the dispute between France and Great Britain as to the French Nationality Decrees in Tunis and Morocco (French Zone) contains an interesting passage on the interpretation of Article 15 of the Covenant.

By this article the members agree that if there should arise between them any dispute likely to lead to a rupture which is not submitted to arbitration, they will submit it to the Council of the League. Paragraph 8, however, adds that :

> " If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

It has never been very clear what were the disputes which the framers of the Covenant regarded as solely within the domestic jurisdiction of a State. The text-books on international law do not address themselves to this particular point, and the following extract from the recent decision of the Permanent Court of Justice at The Hague is, therefore, very valuable.

The dispute arose in the following manner. The Nationality Decrees issued in the two French Protectorates of Tunis and Morocco (French Zone) in November, 1921, imposed French nationality on all persons born in the Protectorates who

by reason of their parentage were justiciable in the French tribunals which had been set up. The French nationality carried with it liability to military service in the French Army.

As the French Government was not willing to refer to arbitration the dispute with Great Britain which resulted from these decrees, Great Britain brought the matter before the Council of the League under Article 15. France then claimed the benefit of paragraph 8, but ultimately agreed that the Council should refer to the Court the question whether she was entitled to treat the dispute as one solely within her domestic jurisdiction.

The decision of the Court on February 7, 1923, contained the following passages as to the meaning of this paragraph :

" The words ' solely within the domestic jurisdiction ' seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

" The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

" For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law. Article 15, paragraph 8, then ceases to apply as regards those States which are entitled to invoke such rules, and the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character and falls outside the scope of the exception contained in this paragraph. To hold that a State has not exclusive jurisdiction does not in any way prejudice the final decision as to whether that State has a right to adopt such measures.

" This interpretation follows from the actual terms of paragraph 8 of Article 15 of the Covenant, and, in the opinion of the Court, it is also in harmony with that Article taken as a whole.

" Article 15, in effect, establishes the fundamental principle that any dispute likely to lead to a rupture which is not submitted to arbitration in accordance with Article 13 shall be laid before the Council. The reservations generally made in arbitration treaties are not to be found in this Article.

" Having regard to this very wide competence possessed by the League of Nations, the Covenant contains an express reservation protecting the independence of States; this reservation is to be found in paragraph 8 of Article 15. Without this reservation, the internal affairs of a country might, directly they appeared to affect the interests of another country, be brought before the Council and form the subject of recommendations by the League of Nations. Under the terms of paragraph 8, the League's interest in being able to make such recommendations as are deemed

just and proper in the circumstances with a view to the maintenance of peace must, at a given point, give way to the equally essential interest of the individual State to maintain intact its independence in matters which international law recognises to be solely within its jurisdiction.

" It must not, however, be forgotten that the provision contained in paragraph 8, in accordance with which the Council, in certain circumstances, is to confine itself to reporting that a question is, by international law, solely within the domestic jurisdiction of one Party, is an exception to the principles affirmed in the preceding paragraphs and does not therefore lend itself to an extensive interpretation.

" This consideration assumes especial importance in the case of a matter which, by international law, is, in principle, solely within the domestic jurisdiction of one Party, but in regard to which the other Party invokes international engagements which, in the opinion of that Party, are of a nature to preclude in the particular case such exclusive jurisdiction. A difference of opinion exists between France and Great Britain as to how far it is necessary to proceed with an examination of these international engagements in order to reply to the question put to the Court.

" It is certain—and this has been recognised by the Council in the case of the Aaland Islands—that the mere fact that a State brings a dispute before the League of Nations does not suffice to give this dispute an international character calculated to except it from the application of paragraph 8 of Article 15.

" It is equally true that the mere fact that one of the parties appeals to engagements of an international character in order to contest the exclusive jurisdiction of the other is not enough to render paragraph 8 inapplicable. But when once it appears that the legal grounds (*titres*) relied on are such as to justify the provisional conclusion that they are of juridical importance for the dispute submitted to the Council, and that the question whether it is competent for one State to take certain measures is subordinated to the formation of an opinion with regard to the validity and construction of these legal grounds (*titres*), the provisions contained in paragraph 8 of Article 15 cease to apply and the matter, ceasing to be one solely within the domestic jurisdiction of the State, enters the domain governed by international law.

" If, in order to reply to a question regarding exclusive jurisdiction, raised under paragraph 8, it were necessary to give an opinion upon the merits of the legal grounds (*titres*) invoked by the Parties in this respect, this would hardly be in conformity with the system established by the Covenant for the pacific settlement of international disputes.

" For the foregoing reasons, the Court holds, contrary to the final conclusions of the French Government, that it is only called upon to consider the arguments and legal grounds (*titres*) advanced by the interested Governments in so far as is necessary in order to form an opinion upon the nature of the dispute. While it is obvious that these legal grounds (*titres*) and arguments cannot extend either the terms of the request submitted to the Court by the Council or the competence conferred upon the Court by the Council's resolution, it is equally clear that the Court

must consider them in order to form an opinion as to the nature of the dispute referred to in the said resolution—with regard to which the Court's opinion has been requested."

The Court decided against the French contention.

An agreement based on the decision of the Permanent Court was reached by the British and French Governments by an exchange of Notes on May 24, 1923, which are printed below as an appendix.

CECIL J. B. HURST.

APPENDIX

His Excellency,
COUNT DE SAINT-AULAIRE,
etc., etc., etc.

FOREIGN OFFICE, S.W.1.
24*th May*, 1923.

YOUR EXCELLENCY,

His Majesty's Government will be prepared to proceed no further with the case submitted to the Permanent Court of International Justice arising out of the nationality decrees promulgated in Tunis on November 8th, 1921, on receipt of an undertaking by the French Government that arrangements will be made by them before January 1st, 1924, whereby a British national who is the child born in Tunis of a British national who was himself born there shall be entitled to decline French nationality. This right will not, however, extend to succeeding generations.

2. I understand from Your Excellency that the child born in Tunis of a British national born elsewhere than in Tunis is not claimed by your Government to possess French nationality and that French nationality will not be imposed on any British national born in Tunis before November 8th, 1921, without an opportunity being afforded to him to decline it.

3. I should be glad to receive from you at the same time an assurance that no attempt will be made to impose Tunisian nationality instead of French nationality on British nationals in Tunis.

4. It is, of course, understood that in agreeing to discontinue the proceedings at The Hague, neither His Majesty's Government nor the French Government abandon the point of view which they have maintained in the diplomatic correspondence and in the preliminary proceedings at The Hague, nor will the principle adopted in the present agreement be applicable elsewhere than in Tunis.

5. With regard to the application to British nationals of the corresponding nationality decrees issued in Morocco (French zone), I would propose that for the present no further proceedings should take place at The Hague, as in present circumstances the question is not one of practical importance. On this question, therefore, the two Governments will maintain their present positions and reserve their rights.

I have the honour to be, with the highest consideration,
Your Excellency's obedient Servant,
(*Signed*) CURZON OF KEDLESTON.

Sa Seigneurie
Le Marquis Curzon de Kedleston,
Principal Secrétaire d'Etat de Sa Majesté Britannique aux Affaires Etrangères.

Ambassade de France en Angleterre,
Londres.
le 24 *Mai*, 1923.

Monsieur le Marquis,

Par une lettre en date de ce jour, No. T 5130/180/317, Votre Seigneurie m'a fait savoir que le Gouvernement de Sa Majesté était disposé à cesser toute procédure dans l'affaire soumise à la Cour Permanente de Justice Internationale, relativement aux décrets de nationalité promulgués en Tunisie, le 8 Novembre 1921, si le Gouvernement français s'engageait à prendre, avant le 1er Janvier 1924, toutes mesures nécessaires pour qu'un sujet britannique, né en Tunisie d'un sujet britannique, qui y est lui-même né, ait le droit de décliner la nationalité française, ce droit, toutefois, ne devant pas s'étendre aux générations suivantes.

Le Gouvernement français m'a autorisé à porter à la connaissance du Gouvernement britannique que les mesures auxquelles vient de faire allusion Votre Seigneurie seront prises en temps utile.

Il est entendu que l'enfant né en Tunisie d'un sujet britannique, né lui-même ailleurs qu'en Tunisie, n'est pas revendiqué comme son national par le Gouvernement français et que la nationalité française ne sera imposée à aucun sujet britannique né en Tunisie avant le 8 Novembre 1921, sans que la faculté lui soit donnée de décliner cette nationalité.

Aucune tentative ne sera faite pour imposer en Tunisie aux sujets britanniques la nationalité tunisienne à la place de la nationalité française.

En acceptant d'arrêter la procédure de La Haye ni le Gouvernement français ni celui de Sa Majesté n'abandonnent le point de vue soutenu soit dans la correspondance diplomatique échangée, soit dans la première phase de l'instance : le principe adopté dans le présent arrangement ne s'appliquera pas ailleurs qu'en Tunisie.

L'application aux sujets britanniques des décrets analogues sur la nationalité promulgués au Maroc (zone française) ne donnera lieu pour le moment à aucune procédure à La Haye, la question ne présentant pas actuellement d'intérêt pratique. En conséquence, les deux Gouvernements, maintenant leur position sur ce point, réservent leurs droits.

Veuillez agréer les assurances de la très haute considération avec laquelle
j'ai l'honneur d'être
Monsieur le Marquis
de Votre Seigneurie
Le très humble et très
obéissant serviteur,
(*Signé*) Saint-Aulaire.

THE ANGLO-GERMAN MIXED ARBITRAL TRIBUNAL

In the case of *Tesdorff and Co.* v. *The German Government*, the Tribunal has recently decided a matter of interest and importance to international lawyers, and especially to such of them as have occasion to devote particular attention

to the Peace Treaties. In February 1916 the German Governor of the Fortress of Antwerp requisitioned a consignment of coffee the property of the claimants. Shortly after the requisitioning the coffee was despatched to Altona in Germany "as fit for Army supplies." At Altona it was placed at the disposal of the Victualling Office of the IXth Army Corps; and the Tribunal found as a fact that the ultimate user of the coffee was among the civilian population of Germany. The claim was based upon Article 297 (*e*) of the Treaty of Versailles, which gives to the Allied national a right of compensation for damage or injury inflicted upon his property rights or interests in German territory as it existed on August 1, 1914, by the application of the exceptional war measures of the German Government. The Tribunal had decided in the previous case of *Weiss Biheller and Brooks Ltd.* v. *The German Government* [1] that it had no jurisdiction to entertain a claim under Article 297 (*e*) where the damage or injury to the property was inflicted in occupied territory. In the case now under discussion the claimants sought with great ingenuity to distinguish their claim from that in Weiss Biheller's case upon the ground that the damage or injury was inflicted not by reason of the requisitioning in Antwerp, but by the allocation of the goods to German purposes in Altona. They contended that the requisitioning in Antwerp was void as not being covered by either Articles 52 or 53 of the Regulations annexed to the Fourth Hague Convention, on the ground that many irregularities accompanied the requisitioning, and especially because the coffee was not for the use of the Army of Occupation. They further contended that even if the requisitioning in Antwerp was good so as to divest the claimants of their property in the goods, such requisitioning was void as falling within paragraph 1 of the Annex to Article 297, which annuls acts done by the enemy in occupied territory in pursuance of war legislation with regard to enemy property rights and interests. The Tribunal decided against the claimants on both points. It held that the mere fact that the coffee was utilised for other parts of the German Army than that which occupied Belgium was not such as to deprive the requisitioning of the "character and effects which as such it has according to international law and the very nature of the things seized." It further held that paragraph 1 of the Annex to Article 297 avoids acts done in respect of vesting orders and the winding-up of businesses and things *ejusdem generis* if done in occupied or invaded territory; in other words, interference with enemy property in occupied territory, in virtue of enemy property legislation, is rendered void. But this does not cover the case of a military requisitioning in occupied territory, which can lawfully operate upon the property even of neutrals. Thus the Tribunal has reaffirmed the broad principle laid down in Weiss Biheller's case, and has rejected a most ingenious argument in support of the claimants, which, had it succeeded, would have had the effect of rendering that principle largely nugatory in its practical application.

C. M. Picciotto.

THE ACADEMY OF INTERNATIONAL LAW AT THE HAGUE

In 1907, on the occasion of the second Peace Conference at The Hague, the idea was conceived of establishing an Academy of International Law, as an institute of higher scientific studies. The scheme was brought before the

[1] No. 12 Receuil, p. 850.

Conference by a letter from M. Demètre Sturdza, President of the Council of Ministers of Roumania, to the President of the Conference, and his draft was placed in the archives. The matter was again revived by a Committee of Dutch lawyers in 1910, and the support of the Carnegie Endowment for International Peace was obtained. The idea was approved by the Institut de Droit International at its meeting in 1913 and, in the early part of 1914, the Hague Academy was founded as a Dutch establishment, and thus obtained a legal status. The liberal co-operation of the Carnegie Endowment enabled it to obtain the accommodation and funds necessary to its regular existence.

Owing to various causes it has not been found possible to start the Academy, but during the course of this summer this will be done, and, on July 14, 1923, the solemn inauguration of the Academy will take place. The courses of lectures will commence on the following Monday, the 16th.

Two sessions are announced; the first extending from July 16th to August 3rd, and the second from August 13th to September 1st. For the present international law will be taught only in relation to peace, excluding the laws of war, which, as the circular issued by the Curatorium states, " owing to the recent memories of the world conflagration can hardly be studied in the objective and impartial spirit which the Academy intends to follow."

The teaching will be given in French, and the lectures are open to all those who, already possessing a knowledge of the elements of international law, desire to improve their knowledge. Every person wishing to attend the Academy must apply for admission, either direct or through the medium of the diplomatic or consular authorities of his country, to the Board at The Hague, but admission will be liberally granted.

The list of lecturers and the subjects of their lectures are such that a large entry of students may be anticipated. The lecturers include the following: Dr. Loder, President of the Permanent Court of International Justice, M. André Weiss, the Vice-President of the same Court, His Excellency M. Adatci, Lord Phillimore, Dr. James Brown Scott, M. Politis, Professors A. G. De Lapradelle, Baron Korff, vån Eysinga, Cavaglieri, Triepel, Strisower, Borel, De Bustamente, Le Fur, Basdevant, Anzilotti, G. G. Wilson, Neumeyer, Schücking, Borchard, Baron Albéric Rolin, J. W. Garner, M. L. de Hammarskiold, M. Alvarez, Dr. N. Murray Butler, Dr. Ellery Stowell, Sir J. Fischer Williams, M. A. Mandelstam, and M. F. de La Barra.

The courses vary in length from ten lectures to single lectures. We wish the Academy every success, and trust that those who are privileged to attend its courses will take back to their respective countries a broader outlook on questions of international law.

A. Pearce Higgins.

L'INSTITUT DE DROIT INTERNATIONAL

The thirtieth session of the Institut de Droit International was held at Grenoble, under the Presidency of M. André Weiss, Vice-President of the Permanent Court of International Justice and a Professor of Law in the University of Paris, from August 28 to September 2, 1922, inclusive. There were fifty-five international lawyers present, representing twenty-one different countries; those representing Great Britain being Sir G. Sherston Baker, Bart., Lord

Phillimore and Professor Pearce Higgins. The meetings were held in the ancient Parliament House of Dauphiné, now the seat of the Cour d'Appel of the Department. In a city so beautiful in its situation and with such charming surroundings, to which a few enjoyable excursions were made, the Institute commenced its work of holding its administrative session on the morning of August 28th. Three new members were elected from the Associates, namely, Lord Phillimore, Professor Theodor Niemeyer of the University of Kiel, and M. Axel de Wedel of Denmark, a member of the Permanent Court of Arbitration at The Hague. The Associates elected were Professor Antoine Hobra (Czecho-Slovakia), of the University of Prague; Baron Serge Korff (Russia), Professor of Georgetown University, Washington; Gabriel Noradounghian (Armenia), formerly Foreign Minister of the Ottoman Empire; and Sir Cecil Hurst (Great Britain), Legal Adviser to the British Foreign Office.

The chief work to which the Institute devoted its labours related to double taxation on death, a subject full of grave difficulties owing to the difference of principles adopted by different countries, some basing their legislation on nationality, others on domicile, though frequently States differed in the application of these principles. As far back as 1913, Professor Strisower of Vienna had presented a long report on this subject and this was taken as the basis of the discussion. The injustice of double death duties was generally felt, the difficulty lay in the practical method of adjustment. The following resolutions were adopted : [1]

" With regard to the principle of double taxation the Institute of International Law expresses the wish that States may conclude conventions with a view to the abolition of the serious injustices of double taxation, especially with reference to succession duties on death. Such conventions should bind the States to introduce into their legislation certain provisions on the limitation of these taxes from the international point of view, basing their uniformity on the following principles :

§ 1. Goods are subject in principle to a succession duty in the State of the domicile of the deceased subject to the following exceptions :

§ 2. The following are subject to succession duty :

1. Immovables : in the State in which they are situate. Movables which have been placed in a permanent manner on an immovable or at its service are assimilated to immovables.
2. All other goods which form the fixed or circulating capital for the working of an immovable or of an industrial or commercial establishment are taxable in the State where the immovable or establishment is situate.
3. Mortgages are taxable in the State where the mortgaged property is situate.

§ 3. The progressive tax on succession should only be paid once.

The conventions for the purpose of establishing double taxes of succession duty on death should establish equitable rules as to preference on the subject of the progressive tax, and, if necessary, on the distribution between the States interested.

[1] *Annuaire de L'Institut de Droit International*, xxix. p. 257.

§ 4. When the succession affects goods found in several countries only one of these countries can take account of the whole of the estate for the purpose of calculating the rate of the tax."

Another topic which was discussed related to the League of Nations. M. Alvarez presented an elaborate report to the Commission on the Covenant of the League of Nations. His proposals, which were not put forward to the Institute, constituted a complete revision of the Covenant, limiting its operations to the Old World, and leaving similar work to the Pan-American Union, both of which are to be embraced by a new World Association. The report of M. Alvarez was a work of much originality and learning, but it was felt that it went beyond the limits assigned to the Commission. After some discussion of a further report of the Commission which met at Grenoble, the following resolution was passed :

" In accordance with the conclusions of the 27th Commission the Institute has abandoned the idea of creating alongside of the League of Nations a World Association to serve as a bond between it and the Pan-American Union, but retains on its agenda the critical study of the Covenant of the League of Nations in order to decide at its next session whether, and if so to what extent, it would be advantageous to suggest amendments to the present text, especially with a view to realise the ideal of the League of Nations becoming universal."

The other subject discussed was the classification of justiciable disputes. This was introduced by a valuable report prepared by Professor Philip Marshall Brown and M. Nicolas Politis, in which, after examining the question at length and concluding that no definition could be proposed, they recommended that every dispute between States should be deemed *prima facie* justiciable until the contrary was proved. Furthermore, that if any dispute was brought before the Court or arbitrators, the Court should decide the preliminary question whether it was or was not justiciable.

The following resolutions were passed by the Institute :

" The Institute of International Law, while expressing the wish that the Powers which, up to the present, have not yet adhered to the special provision of Article 36 of the Statute of the Permanent Court of International Justice, will adhere thereto, recommend to the States the following resolutions :

Art 1. All disputes, whatever be their origin and character, are as a general rule and subject to the reservations mentioned below, susceptible of judicial settlement or arbitral solution.

Art. 2. When, however, in the opinion of the State which is sued, the dispute is not susceptible of settlement by judicial means, the preliminary question whether it is justiciable shall be submitted to the examination of the Permanent Court of International Justice to be decided by it by its ordinary procedure.

If by a three-fourths majority the Court declares that the demand is not well founded, it retains the case to deal with it completely.

If the decision is to the contrary, the case is referred back to the

> parties, and in the absence of amicable arrangement by diplomatic means they remain free to submit it later to the Court after having agreed on the powers to be given it in order to permit it to render judgment."

Before the closing ceremonies, Dr. James Brown Scott invited the Institute to express the wish that the United States and Germany, which were not yet members of the League of Nations, should be admitted to participate in the constitution and working of the Permanent Court of International Justice, and a resolution to this effect, framed in general terms to include all States not yet members of the League of Nations, was carried by a large majority.

It was decided to accept the invitation of the Belgian Government to hold the next meeting, in the summer of 1923, at Brussels. The Institute will then celebrate its fiftieth anniversary. Baron Albéric Rolin, the permanent Secretary of the Institute, intimated that a commemorative meeting would be held at Ghent in the room in which the first session of the Institute was opened. For this session, Baron Edouard Rolin-Jacquemyns of Belgium was elected President, and Dr. James Brown Scott of the United States, Vice-President.

A. Pearce Higgins.

DIGEST OF CASES

CASES DEALING WITH INTERNATIONAL LAW DECIDED BY THE ENGLISH COURTS DURING THE YEAR ENDING APRIL 30, 1923.

By ANDREW ERIC JACKSON, O.B.E., LL.D., Solicitor.

THE English prize courts both of first instance and of appeal seem to have finished their work arising out of the war. Very few cases have come before them for decision during the past year and those decided have raised few questions of any interest.

The President in the *Wilhelmina* [1] has again upheld the right of the prize court to deal with claims brought by neutrals against the Procurator General and other officers of the Crown. The *Wilhelmina*, a Dutch steam trawler, was captured in June 1916 whilst on a voyage from the Icelandic fishing grounds to Ymuiden, with a cargo of freshly caught fish. The vessel was detained till September 1916 and her cargo was sold by the British authorities. The owners claimed damages for the detention of their vessel and the loss of her cargo. The writ in prize making such claim was not issued until February 10, 1921, and the Crown contended that the proceedings could not be instituted on the ground that the Public Authorities Protection Act, 1893, applied, and that under Section 1 of that Act proceedings must be commenced within the six months next after the act complained of. The President held that the prize court being a court administering international law, the Public Authorities Protection Act did not prevent proceedings being brought in that court claiming damages for wrongful seizure and detention even though the proceedings were not commenced until after six months from the date of seizure.

In the case of the *Kara Deniz* [2] the Privy Council held that a steamship flying the Persian flag and lying at Bombay on the outbreak of the war with Turkey was properly condemned as enemy property, the owner, though a naturalised Persian subject, being domiciled in Constantinople. The steamer had previously flown the Turkish flag, but was purchased by the claimant in August 1914 and duly registered under the Persian flag, and whilst lying at Bombay the Persian flag was hoisted instead of the Turkish flag. The British authorities at Bombay detained the vessel on the ground that her transfer to the claimant was not complete and that the proper papers were not on board. Subsequently, on the outbreak of war with Turkey in November 1914, the vessel was seized as a Turkish ship. The prize court at Bombay held that the transfer to the claimant was complete on August 15, 1914, and that the vessel was then entitled to fly the Persian flag, but the court was not satisfied that an arrangement had not been made that her previous Turkish owners should

[1] 39, T.L.R. 249.

[2] 91, L.J. (P. C.) 195.

retain control of the vessel and that the transfer had not been made merely for the purpose of allowing the vessel to return to Turkey under the Persian flag. The proceedings were adjourned for further evidence on these points, and at the subsequent hearing the prize court held on further evidence that the claimant had his commercial domicile in Constantinople and condemned the vessel as good and lawful prize. The appeal from this judgment was dismissed.

Apart from prize cases the English courts have held, in the case of the *Duff Development Company, Limited*, v. *Government of Kelantan and Others*,[1] that they had no jurisdiction to garnishee sums of money belonging to a sovereign State which were in the hands of English debtors of that sovereign State. The Government of Kelantan had been engaged in an arbitration, which they lost, with the Duff Development Company. The Government had subsequently moved in the English court to have the arbitration set aside, but had failed and been ordered to pay costs to the Company. These costs were never paid and the Company, finding that money belonging to the Government was in the hands of the Crown Agents for the Colonies, obtained a Garnishee Order *nisi* against the Agents. The order was set aside on the ground that the court had no jurisdiction over the property of a sovereign State even though such sovereign State had for other purposes consented to the jurisdiction of the English court.

In the case of *in re Berchtold* [2] the court had to decide an interesting question as to the succession to property under conflicting laws. Count Nicholas Berchtold, of Hungarian nationality and domicile, died intestate, leaving property in England, consisting of real estate at Birmingham which had been bequeathed by his father to trustees upon trust for sale and conversion and to stand possessed of the income and capital thereof in trust for him. The greater part of the real estate remained unsold, and the court decided that it was immovable property and that the succession thereto was therefore governed by the *lex situs*, in this case the law of England, and not by the *lex domicilii* of the deceased Count.

[1] 39, T.L.R. 187.

[2] 1923, 1 Ch. 192.

OBITUARY

MAÎTRE CLUNET

Edouard Clunet was born at Grenoble on April 11, 1845. Of his boyhood I can say little. Coming up to Paris, he attended lectures at the École Nationale des Chartes and served as a managing clerk in a solicitor's office, a service which he considered indispensable for his chosen profession of an advocate. Called to the Bar of Paris in 1866 at the age of twenty-one, he became secretary, or, as we should say, " devil " to Maître Senart, " Bâtonnier de l'Ordre des Avocats," who after the war of 1870 was the new Republic's first Ambassador to Rome. Clunet himself naturally served in the army during the war, and for his conduct in the battle of Plateau d'Avron was awarded the distinction of a " citation." He quickly rose to eminence in his profession and was retained in many " causes célèbres." In the Humbert case he pleaded in the Cour des Assises for Emile Daurignac and defended Mata Harri before the Conseil de Guerre. Amongst his numerous artist clients he numbered Sarah Bernhardt. He was one of the most effective speakers of the day. As an after-dinner speaker he was particularly ready and humorous. At the Banquet given by the Royal Netherlands East India Petroleum Company to the International Law Association at The Hague in 1921, Clunet, taking the menu as his text, kept his audience in roars of laughter.

Clunet, however, will be best remembered by the *Journal du Droit International*, known familiarly to lawyers throughout the world as Clunet's *Journal*, which he founded in January 1874, and continued to edit until his death. To this work for close on half a century he brought to bear great learning, critical faculties of a high order and indefatigable energy. Writing of his work in the February number of the *Journal*, Professor André-Prudhomme, Clunet's successor in the editorial chair, says that Clunet recognised that private international law had ceased to be confined to the individuals who happened to find themselves in a foreign State. It was the international relations between commercial, financial and industrial groups which had become the most important, and which therefore required careful and methodical classification. Clunet accordingly entered upon the task of collecting all the facts constituting the web of their international life. Another feature of Clunet's project, no less characteristic, was the connection, which he maintained throughout, between private international law, foreign law and public international law. The foreigner must know under the jurisdiction of what law he can exercise his rights, when it is his national, when it is the foreign law, which determines them. And so Clunet insisted upon the solidarity of private international law and foreign law. And with equal sagacity he perceived the influence of public international law upon the private rights and interests of the individual. The recent Peace Treaties containing provisions affecting the latter amply

confirm his view. Their interpretation and application present in new terms the old problems of private international law. In these circumstances it would be idle to confine private international law to the study of the conflict of laws. Finally, Clunet perceived the necessity of appealing to the aid of scientific jurisprudence.

Based upon these conceptions Clunet's *Journal* has exercised an untold influence upon every department of law throughout the civilised world, and upon its success his fame as a jurist might solely have rested. But he was not content to confine his study of law and his own numerous contributions to the *Journal*. He published several books and brochures on public and private international law, amongst which may be mentioned *Du défaut de validité de plusieurs traités diplomatiques conclus par la France avec les Puissances étrangères ; L'État actuel des relations internationales avec les États-Unis en matière de marques de fabrique ; Offences et actes hostiles commis par des particuliers contre un État étranger ;* and *L'affaire Schnaeblé*. In addition to these, when the Act relating to " Associations " was passed he wrote a book, now out of print, on the legal position of " circles " and commenced a larger work on the same subject, the first volume of which appeared in 1909. In this his personality is completely disclosed and especially his humorous and sarcastic character.

In recognition of his reputation as an international jurist he was elected an associate of the Institut de Droit International in 1878 and a member in 1880. At the meeting of the Institute at Madrid in 1911 he presided, and in his inaugural address he pointed out the immense changes which had taken place in international life since 1873, both in private and public international law. He instanced the Hague Conventions, the establishment of an International Court of Arbitration, the series of treaties of arbitration, the Declaration of London, and particularly the creation of industrial and commercial unions. A new order, he declared, had been established, the international organisation of the immense associations of civilised peoples.

In 1877 Clunet became a member of the International Law Association and a regular attendant at its Conferences. In fact so late as the spring of last year he intimated to me his intention to attend the Conference at Buenos Aires, but apparently failing health deterred him from attempting the long voyage. At the Paris Conference of the Association in 1912, Clunet presided as President of the Association. In so doing, as Lord Justice Kennedy observed, he conferred a new honour upon the Association. Clunet made an ideal chairman. He possessed in a marked degree that genial tact and ready wit which are so essential in guiding public discussion. To quote the Lord Justice again :

> " we have had," he said, " in Maître Clunet (I say it without the slightest flattery) one who has conducted the proceedings of this Conference in a way which will consecrate that Conference in the future as one in which mutual affection and regard have been fostered by one whose personality had an influence upon every member who attended the assembly."

In returning thanks for the compliments showered upon him Clunet refused to accept them for himself.

"Vous m'obligeriez très fort si vous me permettiez de ne pas les garder pour moi. Si je suis ici quelque chose, si j'ai travaillé dans ma vie, c'est que j'ai contracté dans le barreau des habitudes d'esprit, une discipline, une méthode qui peut-être ont pu faire de moi quelque chose. C'est donc à ce barreau de Paris, dont je suis l'un des membres les plus modestes et les plus ordinaires en tous cas, que je vous prie de reporter l'éloge que vous avez adressé publiquement a l'un d'entre eux. Donc les hommages et les remerciements que vous avez bien voulu m'accorder, si vous voulez bien me le permettre, et j'attends sur ce point votre appui unanime, c'est au barreau de Paris que nous les adresserons."

This attitude he maintained to the end. After his death at Strasbourg on October 8, 1922, where he had attended the Aeronautical Congress, a letter was found in which he expressed the wish that any invitations to his funeral outside his family should be confined to one individual only.

"Seul le Bâtonnier sera averti de mon décès et les rites professionnels seront accomplis. Quand on a aimé sa corporation comme je l'ai fait et que, par une vie laborieuse et indépendante, ne l'a pas deshonorée, on lui appartient même après sa mort."

To neither the Institute nor to the Association did Clunet, so far as I am aware, make any written contribution, but his counsel was ever at the service of others. He had not indeed the time. In all the leading international questions of the day he was consulted. Even after the World War he was asked, for instance, to give an opinion with Dr. C. D. Asser and myself by the North German Lloyd in their appeal from the decisions of the Antwerp Prize Court to the Brussels Court of Appeal, condemning some forty German vessels seized by the Belgian Government at the outbreak of war and which shortly before the Armistice had escaped to Holland. "The circumstances," said Professor Pearce Higgins, "declared by those judgments are probably unparalleled in their complexity." [1] It would not have been difficult, therefore, to have found arguments supporting the decisions of the Antwerp Court. But Clunet and I (acting quite independently) found in favour of the German Company upon all the points in issue. Our views were adopted by the Court of Appeal and the decisions of the Prize Court reversed. I have cited this case as an illustration of the reputation of Clunet as an impeccable jurist, who allowed no personal or national feelings to influence his judgment in his reverence for the law. And he had little cause to love the Germans, for his only son had fallen at their hands. This was a blow the effect of which even his overflowing vitality was unable to resist for long. It constitutes a pathetic ending to a life nobly spent in the service of humanity.

Such is the brief, and I fear totally inadequate, appreciation of this great jurist, who with all his learning was one of the most modest of men and who endeared himself to all with whom he came in contact by the charm of his personality and his singleness of purpose.

HUGH H. L. BELLOT.

[1] *British Year Book of International Law*, 1921–22, p. 180.

SIR GEORGE SHERSTON BAKER

We regret to have to record the death of Sir G. Sherston Baker, Baronet, on March 15, 1923. By his death the number of the British Members of the Institut de Droit International is reduced to three, namely, Sir T. Erskine Holland, Sir T. Barclay and Lord Phillimore.

Sir Sherston Baker, who was a member of an old West of England family, was born on May 19, 1846, and succeeded his cousin as fourth Baronet in 1877. He was admitted a Special Pleader in 1866, and was called to the Bar in 1871, when he joined the Western Circuit. His first preferment was as Recorder of Helston, to which he was appointed in 1886; he was transferred to the Recordership of Barnstaple and Bideford in 1889, and in 1901 he was appointed County Court Judge of Circuit No. 17, which comprises the whole County of Lincoln. This appointment, together with the Recordership of Barnstaple, he held until his death.

Sir Sherston Baker's work as an international lawyer is best known in connection with his edition of Halleck's *International Law*, of which a fourth edition appeared in 1908. This book at one time was included in the libraries carried on Flag Ships in His Majesty's Navy. He also published in 1899 *First Steps in International Law*. He was editor of *The Law Magazine and Review* from 1895–1898, a review which frequently contained important articles on international law. He also edited the fifth edition of Archbold's *Quarter Sessions*.

His position as an international lawyer was recognised by his election, first as an Associate of the Institut de Droit International, and in 1921 as Member. His contributions to international law, apart from the works mentioned above, were not many, but he was greatly interested in the subject, especially in maritime questions. He published in 1884 a work on *The Office of Vice-Admiral of the Coast*.

Sir Sherston Baker possessed a charming personality, great vitality and varied interests. He was present at the last meeting of the Institut de Droit International at Grenoble in August last, and as the senior British Member present took part in the closing ceremonies of congratulations and thanks to the retiring President, Professor Weiss, and the Municipality of the City.

A. Pearce Higgins.

APPOINTMENTS

Professor J. L. Brierly, Fellow of All Souls' College, Oxford, Professor of Law at Manchester University, has been appointed Chichele Professor of International Law at Oxford in the place of the late Sir H. Erle Richards.

Professor A. Pearce Higgins has resigned the post of Professor of International Law at the University of London. Mr. Arnold D. McNair, Fellow and Law Lecturer at Gonville and Caius College, Cambridge, has been appointed to give lectures on the subject during the next year at the London School of Economics and Political Science.

REVIEWS OF BOOKS

Histoire des grands principes du droit des gens depuis l'antiquité jusqu'à la veille de la grande guerre. Par Robert Redslob. 1923. Paris: Rousseau et Cie. Gr. 8o. 600 p. (30 fr.)

There is at present, unfortunately, no really good book covering the whole of the history of international law, and diplomatic histories are more concerned with politics than law. This book, by the Professor of the History of Treaties in the University of Strasbourg, does not fill the gap, but it deals with the history of certain leading principles of the law of nations which the author considers to lie at the base of the system. These are: (1) the binding force of Treaties; (2) the freedom or independence of States; (3) the equality of States; (4) the solidarity or interdependence of States.

The history of these principles is dealt with under the following periods: the ancient world, the Middle Ages, the period of dynastic wars (1648–1789), the French Revolution and the Napoleonic era, the treaties of 1814 and 1815, the Restoration, the Crimean War to the Congress of Berlin, the eve of the Great War, the catastrophe of 1914 and the renaissance of world justice. Each of the four principles is discussed under these several heads with a commentary on their growth, application or violation.

The history of these principles is made the framework into which is fitted a history of the topics which usually find a place in works on international law. Thus, under the second heading, that of the doctrine of the independence of States, we find the notion of sovereignty and its limitations, the balance of power, recognition of independence, intervention, diplomatic agents, arbitration and the laws of war and neutrality. The third heading, equality, is thus defined: "Elle exige que des règles de droit identiques vaillent pour tous les membres de la communauté," [1] and as illustrative of his point of view he cites the statement of Drago: "Among the fundamental principles of public international law which humanity has consecrated, one of the most precious is that which decrees that all States, whatever be the force at their disposal, are entities in law, perfectly equal to one another." [2] Lorimer's version is surely more in accord with the facts of State life: "If all that was meant [by equality] were that all States are equally entitled to assert such rights as they have, and that they thus have an equal interest in the vindication of law, the assertion would then be true of States as of individuals." Or as elsewhere he amplifies this: "All States are equally entitled to be recognised as States, on the simple ground that they are States; but all States are not entitled to be recognised as equal States, simply because they are not equal States." Under this heading the author includes the history of the freedom of the seas, oceanic canals, international

[1] p. 42. [2] p. 522.

rivers, the acquisition of territory by occupation, the principle of the " open door " and the right of territorial expansion.

The conclusions which the author reaches after an examination of the history of the principles with which he is concerned show that he is an optimist. He realises, however, that progress is slow : " l'évolution se meut en spirale, pour citer une parole célèbre; mais dans le domaine du droit des gens la spirale n'agrandit que très lentement ses arcs de cercles. . . .[1] Y a-t-il progrès moral dans le monde? Pour répondre, il faut quitter le pays de la science et monter vers le domaine de la foi. L'humanité fait mille détours, souvent inexplicables. Mais elle avance malgré tout. . . . Et voici quelle est ma croyance historique : Si le seizième siècle a été l'ère de la religion, le dix-huitième l'âge de la philosophie, le dix-neuvième l'époque de la science, le vingtième sera le siècle de la Justice." [2]

Notwithstanding what we cannot but think to be defects of method, and in places, inadequate treatment of certain subjects (*e. g.* the growth of the freedom of the seas in time of peace), Professor Redslob's book is worth the attention of students of international law; it is written in a clear and interesting way, and will be found to be stimulating. The book is well printed and contains a table of contents as well as indices of proper names and subjects.

A. Pearce Higgins.

The Control of American Foreign Relations. By Quincey Wright. 1922. New York : The Macmillan Co. 8vo. pp. xxvi + 412. ($ 3.25.)

Nearly five-sixths of this book are concerned with exposition and discussion of the restrictions on the " Foreign Relations " power of the President of the United States laid down in the Constitution itself or developed by judicial interpretation. Only an American lawyer, and a specially accomplished one, would be qualified to give a critical account of that part. All that an English lawyer can say is that the matter is well and clearly arranged, and the treatment has on the face of it every appearance of being accurate and thorough. Moreover, the questions here dealt with really belong not to international law but to national law.

The one definite point of international law that seems to arise is how far the Foreign Minister of one sovereign Power is bound to take notice of the limitations to which the executive of any other Power may be subject by the national constitution. I am not aware that any clear pronouncement on the subject is to be found in the classical publicists, but I am far from pretending to full information. On principle it would seem, in the case in hand, that the Constitution of the United States is, as to its text, a notorious public instrument and that it would be pedantic formalism for any Foreign Office to profess official ignorance of its express provisions. The exclusive authority in foreign affairs of the President of the United States, and public ministers duly appointed by him, subject in the case of making treaties to the advice and consent of the Senate as provided in Article 2, Section 2, may be taken as generally known. And it seems clear that an assurance or warranty of any kind purporting to be given by the President or the Department of State in manifest contravention of those provisions would be merely void, and would form no ground of complaint against the United States for any Government

[1] p. 547. [2] p. 561.

or person ill-advised enough to rely upon it. Such, I understand, is the settled American official view.

But whenever the construction put on the constitutional provisions by the Federal courts becomes material (whether such cases are frequent, or what may be their relative importance, I do not stop to inquire), then it seems that it would be very rash for a foreign Government to rely on its own diplomatic or legal advisers for information. The reasons are obvious to all experienced lawyers and do not need to be stated. In such a case the proper course, it is submitted, is to give full faith and credit to the representative of the United States as a witness to the opinion accepted and likely to be acted upon. Further, I conceive (though this is a minor point) that a Power contracting with the United States may and should take the President's word for the ratification of the treaty having been approved by the required two-thirds majority in the Senate.

There are some circumstances relevant to this topic which lay readers and journalists are rather apt to forget. First, not only treaties made on behalf of the United States but all treaties whatever become operative only when ratified. The Constitution of the United States did not invent the practice of ratification, but prescribed a special form of ratifying. Secondly, the existing conventions of diplomatic usages were largely framed in the eighteenth century, when most European Governments were absolute, and the faith of public acts was hardly distinguishable from the personal honour of the ruling prince. As between such Governments ratification could be refused only on some definite ground within the compass of the treaty itself, such as failure to perform or observe an express condition. Questions might and did arise, however, as to the actual authority of public ministers. Down to our own time it was found extremely difficult, in dealing with the Russian Government, to ascertain who, if anyone, short of the Emperor in person, had power to give a binding assurance of any kind. Work like Professor Wright's should be of great assistance to publicists in considering whether improved rules and understandings can be framed for the use of modern constitutional Governments.

A collateral topic of some interest is the place of constitutional understandings of the kind long familiar to us here in a political system where the supreme law is declared in a written constitution. Professor Wright has no doubt that such understandings are, in fact, at work in the conduct of American foreign affairs, and he thinks it practicable to extend them for the purpose of diminishing occasions of friction between the President and the Senate or Congress. This, again, is ground on which it is not prudent for an English critic to tread.

FREDERICK POLLOCK.

A Guide to Diplomatic Practice. By the Right Hon. Sir E. Satow, G.C.M.G., LL.D. Second and Revised Edition. 1922. London: Longmans, Green & Co. 2 vols. 8vo. pp. xx + 420, x + 438. (42*s.* net.)

The fact that a second edition of this work has been called for only five years after it was first published is clear evidence of the need for a trustworthy handbook on the subject. The work forms one of the series of Contributions to International Law and Diplomacy which was planned by the late Professor

Oppenheim and of which Professor Garner's *International Law and the World War* forms another unit. No one could be more qualified than the author of this work to write on diplomatic practice, for his career in the public service of his country has been long and distinguished, and his tenure of the Legations at Peking and at Tokio has given him experience of diplomatic life at capitals the remoteness of which from Europe still leaves the occupants in happy enjoyment of a freer hand and more continuous tradition in matters of diplomatic usage than is possible in the capitals of Europe.

The work deals fully with the functions and status of diplomatic agents and also with the machinery by which relations between States are maintained. Volume I. contains information on everything concerning the diplomatic agent, the right of legation, the selection of suitable men, their duties and privileges when proceeding to their posts, their immunities, as well as on such questions as the language of diplomatic intercourse and so forth. Volume II. deals with congresses, conferences, treaties and other forms of international agreements, and the methods by which States can intervene in the relations of other States, such as mediation and good offices.

The stores of information on all these subjects are immense and valuable, nor is it information which can be readily acquired, as the questions dealt with are too technical to be treated at length in the ordinary treatises on international law. There is perhaps a tendency on the part of the author to forget that a guide to diplomatic practice is concerned with the conduct of affairs at the present time, and that material which has little or no bearing on the modern methods of diplomatic intercourse is of but little use to the diplomatist of to-day even though it may possess great historical or antiquarian interest. The extravagant claims of certain French diplomatists in the seventeenth and eighteenth centuries to prevent the arrest of persons dwelling in the vicinity of their embassy houses, known as the *franchises du quartier*, were finally abandoned more than a hundred years ago, and an elaborate account of the claims and of the quarrels to which they gave rise is excessive, for it is of no assistance to a modern diplomatist. Again, the practice and procedure of international congresses and conferences to-day are so different from those of older date that it is very doubtful whether detailed accounts of such gatherings as the Congress of Westphalia in 1648, or of any other international meeting before 1800, are of great value.

Many criticisms of details might easily be made, for diplomatic practice is always developing and has changed more rapidly during the last ten years than Sir Ernest Satow realises, but nevertheless the work is an invaluable fund of information to those who require enlightenment on what may be termed the "mechanics of diplomacy."

CECIL J. B. HURST.

A Digest of the Law of England with reference to the Conflict of Laws. By A. V. Dicey and A. B. Keith. Third Edition. 1922. London: Stevens & Sons, and Sweet & Maxwell. La. 8vo. pp. cxi + 952. (£2 5*s.* net.)

Since the appearance of the third edition of this monumental work we have to lament the death of its chief author, Professor Dicey. Dicey was a remarkable man, and amongst his many gifts must be numbered a lucidity of expression

which has rarely if ever been surpassed by writers on legal subjects, but perhaps the most remarkable feature of his life was that at the advanced age of eighty-seven years he should have retained the mental vigour and clearness of vision required to revise and bring up to date what is undoubtedly the leading work on private international law.

It must never be forgotten that Dicey, when he brought his first edition out in 1896, was virtually doing pioneer work. Private international law then, as indeed now, was in a state of flux and very far short of its full development. The works of continental writers were voluminous, Story and Wharton had written extensively for America, but the only works of first-class importance for English lawyers were those of Westlake and Foote. Dicey marked out a line of his own. Confining himself, as distinct from Westlake, to a statement of what the rules of English private international law were and eschewing speculative opinions, he decided to cast his book into the form of a code and to make it, for instance, similar to such a work as Chalmers on *The Sale of Goods Act*. This required a very careful arrangement of the subject matter, always the most difficult problem with which a writer is faced, and in our opinion Dicey evolved an arrangement which, both from the point of view of scientific treatment and practical use, is by far the best which has been produced up to the present.

The book is divided into three main parts. The first deals with matters such as domicile and nationality, which must be understood by everyone no matter what particular topic of the Conflict of Laws he may be engaged upon. The whole of Part II. is confined to jurisdiction, and it is herein that the virtue of Dicey's arrangement lies. Instead of dealing with jurisdiction separately each time that a particular topic, such as contracts or torts, falls to be discussed, he puts the whole subject in the very fore-part of his book and avoids the necessity of all further treatment. This is obviously the logical course to pursue. Whenever a case containing a foreign element requires decision, the first question must be whether the English court has jurisdiction over that particular case. More than this, from the point of view of a student, it is important that from the very beginning of his studies he should grasp the fact (as he will from the early chapters of Dicey) that an English court will never, as a general rule, contemplate the delivery of a judgment unless it can make that judgment effective. This primary fact is a question of jurisdiction, for generally jurisdiction is only assumed when the defendant can be reached by the arm of the court. Part III. sets out the rules relating to the Choice of Law.

The only doubt that occurs to us is whether it is not attempting the impossible to set oneself the task of framing the rules of English law on the Conflict of Laws in the form of a code or digest. The time is scarcely ripe. The subject abounds with disputed points—points which are of vital importance and about which judicial *dicta* of the highest rank have been in conflict for two generations and still remain so. What law, for instance, is to decide whether a person is capable of entering into a mercantile contract? Is it the *lex domicilii* or the *lex situs* which governs the sale of movables? A code implies that one is able to state a rule in a positive manner without fear of its accuracy being impugned, but when a great part of a subject is in a state of doubt and uncertainty, the only way out of the *impasse* for a non-legislative codifier is to append a note of interrogation to a great many of his rules. Again, an author who adopts this

method finds himself in difficulties when he meets with a point on which the judicial authorities are equally divided. Take, for instance, Rule 158 of our author.

> "*Rule* 158. Subject to the exceptions hereinafter mentioned, a person's capacity to enter into a contract is governed by the law of his domicil at the time of the making of the contract. . . .
>
> *Exception* 1. A person's capacity to bind himself by an ordinary mercantile contract is (probably) governed by the . . . *lex loci contractus*."

It is submitted that this form of presenting the rules leaves something to be desired. But this is a small point of criticism and we have nothing but admiration for the treatise.

G. C. CHESHIRE.

A Treatise on Private International Law with principal reference to its Practice in England. By the late John Westlake. Sixth edition by Norman Bentwich. 1922. London: Sweet & Maxwell. 10 × 6½. pp. xxxix + 454. (27*s*. 6*d*. net.)

After an interval—none too short—of some ten years the new Westlake makes its welcome appearance. As compared with the original edition, which was published no less than sixty-five years ago, the present issue appears to be a very large volume and might give rise to the old tag "Quæritur cur crescant tot magna volumina juris"; but the new editor, Mr. Norman Bentwich, who as legal adviser to the High Commissioner for Palestine must have had practical experience of many of the problems dealt with, has succeeded in carrying out the task he set himself of bringing the book up to date without making any excessive increase in its bulk. Indeed the present edition is not materially larger than the last two editions brought out under the supervision of Westlake himself with the assistance of Mr. A. F. Topham. The form and arrangement of the later editions of the work have been studiously preserved, and even where it has been necessary to make alterations owing to changes in the law, such as the chapter on bankruptcy and the chapter on British nationality, in which the changes effected by the Bankruptcy Act of 1914 and the British Nationality and Status of Aliens Acts, 1914 and 1918, have to be recorded, the general scheme and to a great extent the wording of the old editions are retained. At the same time the effect of recent legislation is fairly stated and the results of the more important legal decisions such as *Casdagli* v. *Casdagli* and the *Continental Tyre Company* v. *The Daimler Company* are adequately embodied in the text.

It must not, however, be taken that the statements made by Mr. Bentwich concerning this new material are always accurate; for instance, he says, while commenting on the words of the new British Nationality Acts, that they "enlarge the provisions of the common law and secure British Nationality for the children, wherever born, of persons who although aliens were serving in the British Army at the time of the child's birth, *e. g.* the Russians who formed part of the British Forces during the Great War."[1] There is no

[1] p. 357.

justification for such an interpretation of the Statute and such persons are not entitled to British nationality unless their fathers were British subjects at the time of their birth.

H. S. Q. Henriques.

The Development of International Law After the World War. By Otfried Nippold. Translated from the German by Amos S. Hershey. 1923. Oxford: Clarendon Press. La. 8vo. pp. xv + 251. (7*s.* 6*d.* net.)

This is one of the publications of the Carnegie Endowment for International Peace. Why the Endowment should have selected this work for publication is as difficult to understand as is the eulogy of the introductory note contributed by no less a person than Mr. James Brown Scott.

At the best this is a *post festum* essay. Now that a League of Nations is, however imperfectly constituted, an accomplished fact and a living organ of international life, it would certainly seem that what is described in the Introduction as a " Commentary on the League of Nations before its birth " can have little more than an academic interest at the present day. Dr. Nippold appears to favour the super-State conception of a League of Nations, the sanctions to be applied to a breaker of the international peace culminating (through the stages of economic and political boycott) in the exercise of the " much superior force " of the League, which, it is contemplated, would necessarily be more formidable than the extent of force which any single State could oppose to it. In dealing with the development of the law of war (*si forte necesse*) Dr. Nippold anticipates a time when war can lend itself more readily to the control of international law by reason of the growing tendency for technical methods to increase at the expense of military methods. " Modern technical science has conquered military warfare and with it militarism itself." Dr. Nippold bases his hope for a better ordering of international affairs and for the regulation of force by law upon the growth of democratic ideas, as distinct from the military and autocratic ideas, which are the enemies of international law, for " democracy and international law are two conceptions that must be complementary to each other." While there is much to be said for the view that the autocratic State has a militarist and aggressive predisposition, it would have been instructive had Dr Nippold developed and illustrated rather more copiously the other half of his proposition. The habit of peace depends, as history, even the most recent, tends to show, not so much upon forms of Government as upon a state of mind. It is this state of mind, assiduously cultivated and fearlessly encouraged, which is the only sure foundation for the advancement of the rule of law in international affairs.

The reader who seeks to follow Dr. Nippold's argument is not greatly assisted by the inelegant and rather cumbersome translation.

C. M. Picciotto.

Völkerrecht. Von Dr. Theodor Niemeyer. 1923. Berlin: W. de Gruyter. Kl. 8o. 168 S. Gz. Pappbd. (1*s.*)

The special object of this handbook, which is one of the Göschen series of introductions to scientific subjects, is to make the leading conceptions of international law intelligible to those entering on the study of it. To do this in a

succinct and strictly scientific way is a peculiarly difficult task on account of its controversial character. Fortunately in the present instance it has been undertaken by one of the leading exponents of international law in Germany—Professor Niemeyer of Kiel—who thus gives expression to opinions which are the results of his long experience.

The topics with which his little book deals are comprised under the following heads :—

Ch. 1. The conception and nature of international law.
Ch. 2. Its sources.
Ch. 3. Its history.
Ch. 4. Its subjects and objects—including the legal subjectivity of States, sovereignty, dogmas respecting the State, State supremacy (*Staatshoheit*), territorial supremacy, personal supremacy, State membership or citizenship, territorial limits.
Ch. 5. Intercourse between States in international law, including the organs of such intercourse, treaties or conventions, interests in common between States, contentions and the settlement of contentions between States without war.
There is also a short appendix on war.

These different subjects are carefully explained and treated in such a manner as to show their connection. The style is not too abstract or technical. Where technical expressions are used ambiguities in them are noticed. Care is taken not to overload the subject with unnecessary detail. The book is, in short, an excellent introduction to international law, though in reading parts of it, particularly the opening chapter, a student may require a teacher's assistance.

But the work is not only to be regarded as an elementary one; there is much in it which deserves the attention of all those who are interested in the theory and method of international law. Perhaps what most deserves the consideration of English students is that the author refuses to base his system on established formulæ, but refers back to the actual conditions of life to which they relate.

Thus he begins by pointing out that the expression international law is used in a double sense, which should be clearly distinguished. According to him it may either signify the law itself, that is, the doctrines, principles and rules of which it consists when regarded as a positive system, as is its meaning when one asks the question whether international law is applicable, or it may mean the science of international law, which is its meaning when one speaks of Professors of International Law. International law as a science is not, as here regarded, restricted to the immediate interpretation of its positive system, but embraces every kind of circumstance which has any bearing on problems arising from the application of the idea of law to the relations of States, whether political, economic, historical or social. So, *e. g.*, in considering what is called the question of the freedom of the high sea, we should not, we are told, in the first instance direct our attention to the prevailing rules and doctrines on the subject, but, before taking them into account, should begin by making ourselves acquainted with the special character of the sea, the history of the subject, the actual conditions of international commerce, the requirements of different States and people, and other relevant facts of real life. The dogmatic assumptions on

which international law as a positive system is based, as that it is only concerned with the relations of States, or that it can only arise from agreement between States, are not, as Professor Niemeyer insists, its starting-point as a disciplinary study.

To confine the student of international law to a dogmatic method of treatment would correspond in its way, according to his view, to the lifeless kind of jurisprudence which has been discredited in respect of private law since Rudolph von Ihering battled against it.

E. A. Whittuck.

Wörterbuch des Völkerrechts und der Diplomatie begonnen vom Dr. Julius Hatschek, fortgesetzt vom Dr. Karl Strupp. Lfg. I, Band I. (Aachen-Blockade), 1922. 144 S. Lfg. II, Band I. (Blockade-Droit de Saisie), 1922. 145–256 S. Gz. 3.50. Lfg. III. Band II. (Maas-Neutralität im Seekriege), 1923. 128 S. Gz. 5. Gr. 8o. Berlin und Leipzig: W. de Gruyter & Co.

We have now at hand the first three issues of a new German Dictionary of International Law and Diplomacy. This work is being brought out under the editorship of the well-known writer on international law, Dr. Strupp. The articles in it come down at present to the letter N, the last being the beginning of one on "Neutrality in Sea Warfare."

There is thus sufficient material to enable us to see that the dictionary when complete will be a standing book of reference on the subjects with which it is concerned. It should be borne in mind, however, by those who consult it that it has been written at a time which is particularly unfavourable to any such undertaking, many material facts relating to problems arising out of the War and the Peace Treaties being still matter of controversy, and international opinion concerning these and other questions being still in a state of suspense. Nor in the present disturbed state of Europe, and especially of Germany, is it possible for writers belonging to contending nations to approach the questions which are at issue in an impartial way.

The reason why Dr. Strupp and his coadjutors have not been deterred by these as well as by other considerations of a more direct and practical kind from bringing out such a work under existing conditions appears to be that there is at present, as they tell us, in Germany a widespread demand for accurate information about subjects of international interest, which a dictionary of this kind can conveniently supply. For whereas before the War the study of international law and of cognate subjects was confined very much to professors and persons interested in the theory of it, or to those actively engaged in diplomacy, people generally have, it appears, now found by experience that both the public and private life of the nation are closely connected with matters of this kind. The object of the dictionary, accordingly, is not only to meet the requirements of those who are studying international law in a regular way, as dictionaries like that of Holtzendorff have done, but to give at the same time such information as is required for general use. Hence we find that its articles, as far as they have gone, are generally written in a straightforward and simple style, so as to be easily intelligible, though some of them suffer in this respect from being too much condensed. They are composed by competent persons,

who are almost entirely Germans, and contain a sufficiently complete account of the details of their subjects. Those which describe the diplomatic history of different countries up to the present time under their separate heads will be found particularly useful. The countries or places which are so far the subjects of such articles are : Abyssinia, Afghanistan, Egypt, the Aaland Islands, Alaska, Albania, Annam, Andorra, Antivari, Arabia, Armenia, Banat, Batum, Belgium, Bessarabia, Bokhara, the Bukovina, Bulgaria, Coburg, Danzig, Khiva, the Dobruja, the Dodecannese, the German Empire, Macedonia, Madagascar, Malta, Memel, Mesopotamia.

We have not space on the present occasion to notice these or other articles of this compilation in any detail. Some of them, as, *e. g.*, one on the nationality question, including the subject of the rights of Minorities, will be of much assistance to students on account of the amount of information contained in them, while others throw light on the attitude which Germany is taking up on questions of international law and policy. So in one on the subject of the High Sea (*hohes Meer*) the writer expresses the opinion that the establishment of the freedom of the sea is the question of the future, and that a mere return to the condition of sea law as it has hitherto been is not sufficient to satisfy the requirements of Neutrals.

In the article on blockade the so-called long-distance blockades of the late war are regarded as a return to the system of " paper blockades " ; there is little or no attempt in it to explain the English point of view on the subject, and there is not even a reference to the dispatches and speeches of Sir Edward Grey in which he deals with the subject.

In the article on appropriation of enemy property (*Beschlagnahme feindlichen Eigentums*) it will be seen that English and American jurists and their Governments are accused of having followed during the war the retrogade principle that the alien enemy is an outlaw and that his property, therefore, is subject to confiscation. On the subject of submarine war, there are no signs of disapproval in these articles of the conduct of Germany in the late war. The *Baralong* case, which is constantly being brought up by German writers against England, is described in a separate article, but the main question of international law involved in it, which our Government offered to submit to neutral arbitration, together with the facts of the case, is not explained in the article.

It will be seen that this dictionary does not include particular subjects under general headings to the same extent as most of such dictionaries do, except that notices of distinguished writers on international law do not appear in it in separate articles but are to be grouped together under the title of " history of literature " (*Litteratur-Geschichte*), an arrangement which seems to be sensible. Some terms which are new to international law will be found in the work, such as boycott, which is made the subject of an article.

The number of separate articles in the dictionary, as far as it has gone, on particular cases of international law, including English prize cases, is remarkable. German writers on international law have hitherto paid little attention to English case law on the ground that it has no international authority, while English writers have been inclined to lay too much stress on it. The subject is now being more often regarded in its proper light.

To most of the leading articles in the book bibliographies are attached, which will be found useful to students. The defect of some of them is that

they do not sufficiently refer to British and Foreign State Papers which have been published. In these bibliographies English text-books—Oppenheim's treatise more especially—are frequently mentioned, and articles in English legal periodicals are more frequently cited than is usual in German books on international law. There are too many misprints or mistakes in English words in the dictionary: as, for example, on page 3, Lord Valentin for Valentia; page 6, Price for Prize; page 11, Yervabook for Yearbook; page 67, Lea for Sea; page 117, Phillimore Walther for Walter; page 198, Protektorate for Protectorate; pages 205 and 207, Deklaration for Declaration; page 222, Bosphore for Bosphorus; page 134, E. T. H. Holland for T. E. Holland; page 165, Hondures for Honduras. We do not speak of the late distinguished President of the Admiralty and Probate Division as Sir Evans.

It may be expected that this work when it is completed will, by the assistance of the Carnegie foundation or by some other means, be translated into English. But even if this happens, it will not satisfy the great need that exists for a dictionary of the kind written mainly by Englishmen, or at any rate by English-speaking people. Let us express the hope that before very long either the Oxford or Cambridge University Press may see their way to becoming responsible for such an undertaking.

E. A. Whittuck.

Histoire des Violations du Traité de Paix, Par Dr. Lucien-Graux. Paris: Les Editions G. Crès et Cie. Tome 1er: 28 Juin, 1919—24 Septembre, 1920. 7me Ed. 1921. In-16. viii+385 p. 8 fr. Tome 2me: 24 Septembre, 1920—12 Novembre, 1921. 1922. In-16. vii + 485 p. (12 fr.)

This is a very elaborate work showing considerable ability and infinite industry, written, as its title betrays, with a very definite purpose. The author seems from the time of the Armistice to have set himself to collect everything that might bear upon the non-fulfilment of the clauses, first of the Armistice and afterwards of the Treaty of Versailles. He styles it "Une œuvre d'histoire? Certes, mais conçue sur un plan qui exclut presque absolument le commentaire personnel, en se bornant à juxtaposer des faits successifs, dans leur ordre chronologique . . ."—an excellent object, but to be qualified in two respects; in the first place, the "commentaire personnel," so far from being excluded, appears in almost every page, and secondly, incidents of wholly unequal value are introduced as it were on the level. Wild articles in local German papers, violent speeches by individual Germans, even the construction which French or other foreign newspapers may place upon German action or German mentality, have apparently the same value attached to them as if they were actual events.

Dr. Lucien-Graux unfortunately set out with the expectation that the Germans would do their best to avoid compliance with the severe terms of the Treaty; and he has no difficulty in showing unwillingness, delay, deprecation, sometimes artifice, and in the matter of economic satisfaction, as we all know, positive refusal—whether that refusal be wholly or partially a case of unwillingness or a case of inability. The work is none the less one of value as a conscientious collection of newspaper cuttings; and the re-arrangement of them under proper headings is effected with true French lucidity: in fact Dr. Lucien-Graux has become so absorbed in his task that the work is a narrative not only of the

sayings and doings, the " faits et gestes " of Germany, but of events in the other ex-enemy nations and in the new States which have grown up since the War.

The *leit-motiv* of the work is that Germany has not followed the example of Austria after her defeats in the nineteenth century, when her Prime Minister said : " L'Autriche ne boude pas, elle se recueille," but has from the beginning looked forward to an ultimate " guerre de revanche." Who could have been so innocent as to expect anything else? Where does that phrase come from? It is the French battle-cry from shortly after 1871. The author is probably not so old as the writer of this review, or he would remember the immediate stirring of feeling in France after she had to cede Alsace-Lorraine, how it became a patriotic duty of the youth of France to cultivate " les mouscles " in order that they might equal the Teutons in physical strength. The cult was amusingly parodied in *Tartarin sur les Alpes*. Has the author forgotten the funereal draping of the statue of Strasbourg among the group representing the great cities of France collected in Paris? If there was to be no question of a " guerre de revanche," Silesia should not have been mutilated, nor should such severe terms in respect of delivery of materials and money have been imposed.

However, granted all this, the author, step by step and day by day, proves much of his case. The Germans are angry, indignant; they give utterance to their thoughts; they sink at Scapa Flow the Fleet which they have had to surrender to the English; they surrender arms and munitions unwillingly; *caches* have to be discovered; they resist as far as they can the acquisition of any part of Silesia by the Poles; they may be at the bottom of the desire on the part of Austria, reduced to a small State, to associate herself with a larger Germany. No doubt they sympathise with the German minority from Bohemia and possibly with the Magyars of Hungary in their great losses of territory.

These matters the author pursues through their various ramifications, and each volume has chapters on " L'Allemagne devant le traité," " L'Alsace et la Lorraine," " Pour une Restauration monarchique," " Le Chapitre des indemnités," " L'esprit de revanche," " Armée," " Marine," " Aviation," " L'Allemagne économique," " L'action allemande en Russie," " L'Allemagne et les neutres."

In connection with the economic position of Germany, the author gives a full account of the various conferences and *pourparlers*, and even adds in the Appendix many of the original documents; and he makes the usual suggestions and collects all the various statements and points of view, but it cannot be said that he arrives at any pointed conclusion.

In one respect, however, he shows himself very sane. In the earlier volume he points out how foolish his people were in adhering to the " serment du temps de guerre : ' N'achetez jamais plus rien aux Allemands ! ' " and shows his comprehension of the economic truth that Germany can only pay if she can sell her products.

His chapters " L'Alsace et la Lorraine " are also interesting. He speaks out as to certain clumsy acts of the early French administration, the disappointment of the students whom he met at Strasbourg, the inferiority of the intellectual pabulum offered to them and to the youth of Alsace generally, and the necessity of much prudence in the introduction of the French laws as to elementary education in connection with religious teaching and the use of the German language.

In conclusion, the author promises us a third volume in which he expects to deal with German diplomacy on a large scale, and anticipates the revision of the Treaty of Sèvres and the restoration of a Turkey powerful enough in union with Germany to make the latter mistress of the road to India and thus give her a position which would effectively bring about a revision of the Treaty of Versailles—a sufficiently alarming outlook for Great Britain if her statesmen and her people were likely to treat it seriously.

PHILLIMORE.

Die Friedensschlüsse 1918–1921. Hrsg. von Th. Niemeyer. (Jahrbuch des Völkerrechts, VIII. Band; Die völkerrechtlichen Urkunden des Weltkrieges, VI. Band.) 1922. München und Leipzig: Verlag von Duncker und Humblot. Gr. 8o. vii + 788 S.

This supplementary volume of the *Jahrbuch des Völkerrechts* contains the texts of the Treaties of Peace concluded between 1918 and 1921. The most useful part is the full text of the treaties signed at Brest Litovsk and elsewhere between the Central Powers on the one side, Russia, the Ukraine, Finland and Roumania on the other, which are printed in the original German. The texts of these are not easily accessible here. The Treaties of Versailles, St. Germain, Neuilly, Trianon, and Sèvres are printed in French, and we also have the separate treaties between Germany and China, Germany and Austria and Hungary, and Germany and the United States. It will be noted that the numerous separate agreements, including the Minority Treaties, are not included.

The volume ends with the text of the different Armistice Agreements of 1917–18. In the Armistice between the Allies and Germany we note that in Clause 19 we have the reading "Sous réserve de toute *renonciation* et réclamation" instead of "toute *revendication* et réclamation." We should have expected a note drawing the reader's attention to the fact that there is some uncertainty as to the correct text. Owing to the omission of the names of the Plenipotentiaries in the preamble to the Treaty of Versailles, the sentence immediately following the list of names, which is left standing, is in the air and has no meaning. Apart from these two small points, the whole forms a useful and convenient edition of these documents.

War and Treaty Legislation, 1914–22. By J. W. Scobell Armstrong. Second Edition. 1922. London: Hutchinson & Co. 8vo. $9 \times 5\frac{3}{4}$. pp. 614. (32*s*. 6*d*.)

The Treaty of Versailles and the other Treaties of Peace have given rise to many problems of private international law which demand solution alike from the juristical writer and from the practitioner. The settlement of the pre-war commercial relations of British and German or Austrian nationals is now covered by the Clearing Office procedure, which, in prescribed cases, comes up for review before the Mixed Arbitral Tribunals. The Tribunals, again, are invested by the Treaty with an important and extensive jurisdiction which includes not merely the consideration of enemy debt claims, but also claims made against the German Government for compensation in respect of acts done

by its authorities to Allied property in Germany during the war. The student of the subject thus finds himself confronted with the necessity of mastering a considerable body of new law. In addition to the voluminous and complicated provisions of the Treaties there is a multiplicity of Orders in Council carrying them into operation, and, by now, a considerable mass of decisions of the Tribunals collected in the *Receuil des Décisions des Tribunaux Arbitraux Mixtes*. Mr. Scobell Armstrong has collected in one volume all the material necessary for a clear understanding of the commercial and economic parts of the Treaties of Peace, and for that practical grasp without which no lawyer who is called upon to advise upon or to argue such questions can regard himself as adequately equipped. Mr. Armstrong has, however, done much more than achieve a mere compilation, however skilful. He has shown in an historical manner how the problems of private property in enemy countries were dealt with by the Governments concerned. In the case of the Allied countries it is especially important to trace the merging of the war legislation into the comprehensive settlement made by the Treaties. All the important laws and decrees of the enemy Governments that dealt with the control of enemy property are included in this valuable book.

No student of the Peace Treaties, and certainly no legal practitioner who finds himself concerned with their problems, can for long dispense with this book. Mr. Armstrong deserves the congratulations and the thanks of all such for its accuracy, its comprehensiveness, and its clear enunciation of principles.

C. M. Picciotto.

A Monograph on Plebiscites: with a Collection of Official Documents. By Sarah Wambaugh. Prepared under the supervision of James Brown Scott, Director of the Division of International Law of the Carnegie Endowment for International Peace. 1920. New York: Oxford University Press. La. 8vo. pp. xxxv + 1088. (25*s*. net.)

The funds of the Carnegie Institute have been well applied in enabling Miss Wambaugh to publish this able and important volume. It deals with a subject which has during the last few years become of great practical interest, for we have been able to watch a number of plebiscites organised as a result of the Peace Conference. The questions therefore are naturally asked: What is a plebiscite? How did the idea originate? What previous experience is there available as to the method and working of the institution? To these questions Miss Wambaugh's book gives the answers. The greater part of it is occupied with a transcription of the essential documents concerning the plebiscites which were held during the first years of the French Revolution, when the French nation still acted in accordance with the doctrines of Rousseau and desired to find out the general will of a country before its political destination was determined. We have, following on these, the revival of the system in 1848 and again after the war of 1859. In addition to the plebiscites in Central Italy, we have those in Nice and Savoy, in Moldavia and Wallachia, and the proposal for a plebiscite in North Schleswig, which was, however, not to be carried out until 1920. Other illustrations are taken from the western world—the West Indies, and the proposal to settle the boundary dispute between Chile, on the one part, and Bolivia and Peru, on the other, in this manner. The documents,

which are now made easily available for the first time, enable the student to become acquainted, not only with the general idea, but also with the detailed working of it in practice; the latter, we need not say, is often the more difficult and the more important.

Preceding the collection of documents, we have an historical introduction of over 160 pages, in which the authoress analyses and digests the results of her researches. In it she deals not only with those cases in which the method of the plebiscite was adopted, but also those, especially Schleswig and Alsace Lorraine in 1871, in which it was rejected, and she describes the controversy which arose between the French on the one side and the Germans on the other. It was, in effect, a discussion on the principle of self-determination, and curiously enough, some of the most important cases furnishing arguments against the application of this doctrine were to be found in the expansion of the United States. The whole account of the attitude of revolutionary France is of especial value; we have a very clear exposition of the manner in which in 1790 the country adopted the principle of popular sovereignty and carried this through, for instance, in the annexation of Avignon; but this period lasted but a short time, and when we come to the so-called plebiscites in Belgium and in the Rhine Province, we are able to trace how the method was so worked as to become merely a cloak for annexation.

A History of European Diplomacy, 1815–1914. By R. B. Mowat. 1922. London: Edward Arnold & Co. 9 × 6. pp. viii + 308. (16*s*. net.)

Mr. Mowat's survey of European diplomacy from 1815 to 1914 is rather in the nature of an elementary manual for the student, or useful handbook of reference. Within its limits it is well informed and clearly written, and the judgment of the author is generally sensible and unbiased. As he himself tells us, it is designed to serve a purpose similar to that of M. Bourgeois' *Manuel historique de politique étrangère;* it explains in broad outline the main problems with which diplomacy had to deal and is on the whole rather an introduction to a general study of European history during the period than, as the title might seem to suggest, a technical study of diplomacy. It is inevitable indeed, if for no other reason than the restriction of space, that we do not find much about the more technical matters of diplomacy, as, *e. g.*, will be seen by a reference to the accounts given of the establishment of the Kingdom of the Belgians, the guarantee given to Greece, the Straits Convention—there seems to be no account of the cession of the Ionian Islands to Greece and the renewal of the guarantee in 1863. His description of the Belgian settlement is not quite correct in that there is no reference to the special treaty between the five Great Powers and Belgium itself. On the other hand, the larger matters of policy and history, such as the establishment of Italian independence and the outbreak of war in 1870, will be useful to beginners.

Grotius Annuaire International pour les Années 1921–1922 et pour l'Année 1923. Ed. par M. J. van Flier, etc. 8me et 9me Années. 1922 et 1923. La Haye: Martinus Nijhoff. In-8. 308, 496 p.

The *Grotius Annuaire* for the years 1921–1922 and for 1923 contains much that is of value and interest to international lawyers. The account given in

the 1921–1922 volume of the steps leading up to the accession of Holland to the League of Nations contains much useful information, and this is supplemented in the current issue by an article dealing with Holland's activities as a member of the League. The constitution and membership of the Permanent Court of International Justice are fully dealt with in the first volume under consideration, while the second volume reproduces the three advisory opinions given by the Court in 1922, and also the decision of the Permanent Court of Arbitration on the question of the Norwegian claims against the United States arising from the requisitioning of vessels during the war. Included in the 1922 volume are some of the more important decisions of the English and Belgian Prize Courts. The 1923 volume, amongst other interesting features, contains articles on the conference on Russian questions held at The Hague in June and July 1922, and on the Hague Rules of 1922 relative to bills of lading. A bibliography of books on matters of international law published in Holland appears in both issues. These are excellent volumes, and the form and presentation are as satisfactory as the matter.

C. M. Picciotto.

L'Afrique et la Paix de Versailles. Par Étienne Antonelli. 1921. Paris: Bernard Grasset. In-16. 268 p. (2 cartes.) (6.75 fr.)

The history of European colonisation during the past five centuries has been one of much bloodshed, of conquest and selfish exploitation for the sake of the mother countries. The theories which were adopted in connection with colonisation were coloured mainly by the particular object which the European countries had in view—commercial enterprise, the acquisition of territory for the settlement of their excess population, or the expansion of the area under their own rule in order to spread European civilisation, religion and education. The indigenous population of the countries acquired by conquest, which were thus brought into contact with European culture, were rarely considered in any other light than as accessories to those countries; and unless and until self-determination enabled them to exact consideration for their own wants and desires, they remained in a state of servility and semi-slavery. The modern view of colonial government, *i. e.* government by a responsible organisation in the interests mainly of the colony itself, has led to its being considered as a trust placed in the hands of the mother country for and on behalf of the colonial subjects under its sway. Its latest development finds expression in the Treaty of Versailles, where the trust has been developed into a mandate under the supervision of the League of Nations.

In this phase colonial government has reached a high point of development, at which the policy may range from an unselfish guardianship of an indigenous population, with the object of protecting it from harmful influences or of assisting its gradual education and evolution, to the admission of colonies on an equal footing with European States in a League embracing the free nations of the earth.

M. Étienne Antonelli has followed this trend of thought with regard to Africa in his recent book, *L'Afrique et la Paix de Versailles.* He attempts to sketch the part played by the various European States in the "dark continent." "Colonial policy has become a world policy" are the opening words of his

Preface, and in the First Part of the book he follows with painstaking care the participation of Great Britain, Germany, France, Portugal, Italy and Belgium in the development of Africa from the seventeenth century down to 1914. It must be left to the student of colonial history to decide whether in his historical review he is quite fair to Great Britain in ascribing to her a purely commercial motive in her treatment of African races, or to Germany in maintaining that her anxiety for colonial expansion was almost entirely due to the desire for brute domination. It is also open to question whether he is quite correct in describing France as the only country swayed by a purely unselfish motive, that of bringing French civilisation—the *Pax Gallica*—to the subject races of Africa. The antagonism between France and Germany is characteristically displayed in this book and it is with genuine regret that the author describes the unsuccessful attempts on the part of his countrymen to check the development of German power in East Africa before the Great War.

In the Second Part of the book the author enlarges on the change of ideas brought about by the war, the loss by Germany of her Colonial Empire, and the preparations made by Italy and other European nations to bring about a redistribution of African territory among the Allied Powers. At the same time the idea began to gain ground that the former German colonies should not become part and parcel of other countries, except where they belonged, geographically and ethnologically, to some neighbouring country.

> " Intérêts commerciaux, ambitions impérialistes, idéologies imprécises, ainsi confrontés devraient donner le traité dont nous allons étudier les clauses coloniales, pleines d'imprécisions, d'amphibologies et de traquenards tendus sous le couvert des plus nobles principes humanitaires."

In his Third Part the author deals with the clauses relating to colonies in the Treaty of Versailles. The first principle underlying the provisions of Article 22 of the Covenant of the League of Nations is that the former German colonies in Africa shall not be returned to Germany, but shall be held in trust under the tutelage of some European nation. Quoting from one of M. Poincaré's replies to Germany's protest against the retention of these colonies, the author says :

> " Les puissances alliées et associées sont d'avis que les indigènes des colonies allemandes sont violemment opposés a l'idée de retomber sous la souveraineté allemande. Pour ces motifs les puissances alliées et associées considèrent que leurs propositions territoriales sont d'accord avec les bases de la paix telles qu'elles ont été acceptées."

As the protagonist of the tutelage theory (" la colonisation tutelle dans les cadres de la suzeraineté ") M. Antonelli quotes M. Henry Simon.

> " Il déclarait que la France entendait se soumettre a des obligations précises, égalité commerciale sans restrictions, proclamation des règles générales de justice et de sollicitude dans ses rapports avec les indigènes."

Yet in the distribution of the mandates national rivalries were sufficiently prominent.

Thus, according to the author, Africa enters upon a new phase of her existence. Although future difficulties are not eliminated, and are in fact

looming on the horizon and casting their shadows before them, it may be said that all dubious territorial questions have been settled.

> " En somme, dans le statut Africain nouveau établi par le traité de paix, les questions coloniales, envisagées dans leur aspect territorial, peuvent etre considérées comme définitivement résolues."

Africa has been definitely parcelled out. A new era has commenced for its inhabitants and the colonial policy of the future will remain one of trust and responsibility.

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Formgültigkeit in Deutschland errichteter letztwilliger Verfügungen hinsichtlich im Staate New York belegenen Vermögens. (Lorenzen.)

ZEITSCHRIFT FÜR VÖLKERRECHT. Begr. von Joseph Kohler. Unterständ. Mitarb. vom Prof. Dr. Meurer u.a. Hrsg. vom Dr. Max Fleischmann, Prof. Dr. Karl Strupp. Bd. XII. H. 3. (159 S.) 1922. Breslau: J. U. Kern. Gr. 8°. Mk. 6.72. (Bd. I–XI u. 6 Ergänzungshefte, Mk. 432.)

OFFICIAL PUBLICATIONS.

League of Nations.[1]

Albania, The Economic and Financial Situation of. Report by Professor Albert Calmes (Luxembourg), regarding his Mission of Enquiry in Albania. Annex presented to the Council by the Financial Committee of the Provisional Economic and Financial Committee on its Eighth Session, Geneva, September, 1922. 1*s.* 6*d.* net.

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— Special Supplements: October 1922, The Financial Reconstruction of Austria. With a Preface by Sir Arthur Salter. 6*d.* net. March 1923, The Financial Reconstruction of Austria. 6*d.* net.

Official Journal. February 1920– . (Fr. and Eng. since January 1922, separately.) Annual subscription, 1922, £3; 1923, £2 10*s.* Single numbers, various prices.

— Special Supplements (Fr. and Eng.). No. 7, July 1922. Constitution of the Free City of Danzig. (Ger. text, with translations in Eng. and Fr.) 3*s.* 6*d.* net. No. 8, July 1922. Index to the Minutes of the Sessions of the Council,

[1] Published by the Publication Department of the League of Nations, Geneva. British Agents: Constable & Co., Ltd., 10–12 Orange Street, London, W.C.2.

1921. 5*s.* net. No. 9, October 1922. Resolutions and Recommendations adopted by the Assembly during its Third Session (September 4–30, 1922). 2*s.* net.

Permanent Mandates Commission. Minutes of the Second Session, held in Geneva August 1–11, 1922, under the Chairmanship of the Marquis Theodoli. 5*s.* net.

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— See also under *International Labour Office.*

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Temporary Mixed Commission on Armaments, Geneva, September 7, 1922. 4*s.* net.

Third Assembly. Supplementary Report to, on the Work of the Council and on the Measures taken to execute the Decisions of the Assembly. (July–August 1922.) Geneva, August 28, 1922. 1*s.* net.

— See also *Esperanto, Official Journal* (*Special Supplements*), *Reduction of Armaments.*

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— The International Labour Review. (Monthly.) Single copies 3*s.* each. Annual sub. 24*s.*

— Internationale Rundschau der Arbeit. (Periodical Publication.) 1923– . (Ger.).

— Legislative Series. (Irregular periodical publications). 1919. (Eng. only.) 1920– . (Eng., Fr. and Ger.) Annual sub. £1.

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Africa, West. Report on the British Mandated Sphere of Togoland for 1920–1921 (together with a covering Despatch from the Governor of the Gold Coast). (1922.) [Cmd. 1698.] 1*s.* (1*s.* 1½*d.*).

Air Council. Order in Council, July 14, 1922, providing for the Membership of, and the Exercise of Powers and Duties and the Transaction of Business by, the Air Council. (S.R. & O., 1922, No. 819.) 1*d.* (1½*d.*).

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—— Treaty of Saint Germain-en-Laye with Austria. Rules, Dec. 30, 1922, made by the Administrator of Austrian Property, and approved by the Board of Trade under Art. I. (xiv) of the Treaty of Peace (Austria) Orders, 1920–1922. (S.R. & O., 1922, No. 1444.) 1*d.* (1½*d.*).

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Bechuanaland. The Bechuanaland Protectorate (Railway Lands) Order in Council, May 25, 1922. (S.R. & O., 1922, No. 571.) 1*d.* (1½*d.*).

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[1] Published by A. W. Sijthoff's Publishing Company, Leyden, The Netherlands.

[2] May 1, 1922–January 31, 1923. Published by H.M. Stationery Office, Kingsway, London, W.C.2.

The figures in parentheses indicate the price including postage.

Abbreviations: [Cmd.], Papers by Command; S.R. & O., Statutory Rules and Orders.

Belgian Law respecting the Acquisition and Loss of Nationality. (Miscellaneous No. 1, 1923.) [Cmd. 1792.] 3*d.* (3½*d.*).

Bessarabia. Treaty between the Principal Allied Powers and Roumania, signed at Paris, Oct. 28, 1920. (Treaty Series, No. 15, 1922.) [Cmd. 1747.] 3*d.* (3½*d.*).

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—— The Treaty of Peace (Bulgaria) (Amendment) Order, July 14, 1922. (S.R. & O., 1922, No. 815.) 1*d.* (1½*d.*).

Canada, Accession of, to the Real and Personal Property Convention of March 2, 1899. Convention between the United Kingdom and the United States of America, signed at Washington, Oct. 21, 1921. (Treaty Series, No. 10, 1922.) [Cmd. 1728.] 2*d.* (2½*d.*).

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Commercial Treaties. Hertslet's. Vol. 28. 1922. 32*s.* 6*d.* (33*s.* 6*d.*).

Copyright, International. The Berne Copyright Convention (Free City of Danzig) Order, Oct. 13, 1922. (S.R. & O., 1922, No. 1201.) 1*d.* (1½*d.*).

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Fleets (The British Empire and Foreign Countries). Return showing the Fleets of the British Empire, United States of America, Japan, France, Italy, Russia and Germany, on Feb. 1, 1922, omitting obsolete ships of all classes, and distinguishing, both built and building, Battleships, Battle Cruisers, Cruisers, Light Cruisers, Armoured Coast Defence Vessels and Monitors, Aircraft Carriers, Flotilla Leaders, Torpedo Boat Destroyers, Torpedo Boats, Submarines, Sloops, Coastal Motor Boats, Gunboats and Despatch Vessels, and River Gunboats; Return to show Date of Launch, Date of Completion, Displacement, Horse-power, Type of Machinery and Fuel and Armaments reduced to one common scale. (H. of C. Reports and Papers, 1922, No. 123.) 2*s.* (2*s.* 2*d.*).

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—— See also *Fleets, War Debts.*

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—— Reparation Commission Papers. I.: Statement of Germany's Obligations under the heading of Reparations, etc., at April 30, 1922. Extracts from the Accounting Records of the Reparation Commission. (1922.) 2*s.* (2*s.* 1½*d.*) II.: Agreements concerning deliveries in kind to be made by Germany under the heading of Reparations. (1922.) 1*s.* 3*d.* (1*s.* 4½*d.*). III.: Official Documents relative to the amount of payments to be effected by Germany under Reparations Account. Vol. I. (May 1, 1921, to July 1, 1922). (1922.) 3*s.* 6*d.* (3*s.* 8½*d.*).
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Slesvig. Treaty between the Principal Allied Powers and Denmark, signed at Paris, July 5, 1920. (With Map.) Treaty Series, No. 17, 1922.) [Cmd. 1585.] 2*s.* (2*s.* 1½*d.*).
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Serb-Croat-Slovene State. See *War Debts.*
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United States. Supplementary Extradition Convention between the United Kingdom and the United States, signed at London, May 15, 1922. (Treaty Series, No. 18, 1922.) [Cmd. 1770.] 2*d.* (2½*d.*).
—— See also *Canada, Fleets.*
War Debts. Despatch to the Representatives of France, Italy, Serb-Croat-Slovene State, Roumania, Portugal and Greece at London. (Miscellaneous, No. 5, 1922.) [Cmd. 1737.] 2*d.* (2½*d.*).
Washington Conference. See *Limitation of Armament.*

United States.[1]

Aerial co-operation with [English] navy; by C. H. K. Edmonds. (1922.) v + 20 p. (Navy Dept., Aeronautics Bureau.)
Alien property. See *Trading with the Enemy.*
Aliens. Deportation of aliens convicted of violation of narcotic and prohibition acts, hearings on H. R. 11118 (amended form of H. R. 10075 and H. R.

[1] January 1922–April 1923. Published by the Government Printing Office, Washington, D.C.

11058); statements of C. N. McArthur, James E. Jones, [and] W. W. Husband, March 29, 1922. (1922.) ii + 537–555 p. (H. of R. Immigration and Naturalization Committee Serial 3–B.)

Aliens. Protection of aliens and enforcement of their treaty rights, hearings on S. 1943, Aug. 23 and 24, 1922. (1922.) ii + 21 p. (Senate, Foreign Relations Committee.)

American Expeditionary Forces. Indemnity for damages caused by American forces abroad, report to accompany S. 1018 [to amend act to give indemnity for damages caused by American forces abroad]; submitted by Mr. Parker of New Jersey. Feb. 17, 1923. (1923.) 3 p. (House report 1646, 67th Cong., 4th sess.) Paper, 5 c.

Anglo-Japanese alliance and Franco-Japanese alliance, agreement between United Kingdom and Japan, signed at London, July 13, 1911, [and] Agreement between France and Japan in regard to continent of Asia, signed at Paris, June 10, 1907; presented by Mr. Moses. (1922.) 6 p. (Senate doc. 117.)

Austria. Release of lien and extension of time on Austrian loan, report to accompany S.J. Res. 160 (authorising extension for period not to exceed twenty-five years, of time for payment of principal and interest of debt incurred by Austria for purchase of flour from Grain Corporation); submitted by Mr. Fordney. March 24, 1922. (1922.) 3 p. (House report, 830.)

—— Treaty between United States and Austria establishing friendly relations, signed Vienna, Aug. 24, 1921, proclaimed Nov. 17, 1921; and parts of Treaty of Saint Germain-en-Laye, concluded Sept. 10, 1919. (1922.) [1] + 113 p. (State Dept., Treaty Series, No. 659.)

—— Treaties of peace with Austria and with Hungary, and protocols and declarations annexed thereto, with notes and index, 1920; compiled by George Grafton Wilson. (1922.) 263 p. (Navy Dept., Naval War College.) Cloth, 65 c.

Canada. Postal convention between United States and Canada, signed Ottawa, Dec. 20, 1922, Washington, Dec. 22, 1922, approved Dec. 22, 1922. (1923.) [1] + 5 p. (State Dept.)

—— Supplementary convention between United States and Great Britain providing for accession of Canada to real and personal property convention of March 2, 1899, signed Washington, Oct. 21, 1921, proclaimed June 19, 1922. (1922.) [1] + 2 p. (State Dept., Treaty Series, No. 663.)

China. Anglo-Japanese treaties: (1) Agreement relative to China and Korea, signed London, Jan. 30, 1902; (2) agreement respecting integrity of China, signed London, Aug. 12, 1905; (3) agreement respecting integrity of China, signed London, July 13, 1911; presented by Mr. McCormick. (1922.) 7 p. (Senate doc. 163.)

—— Claims of China for damages on account of unlawful acts in China of persons connected with military and naval service of United States, report in relation to four claims by Government of China against United States for damages caused by negligent or unlawful acts of persons connected with military or naval service of United States. March 9, 1922. 4 p. (1922.) (House doc. 204.)

—— Exportation of arms or munitions of war to China unlawful, proclamation. March 4, 1922. (1922.) 1 p. fo. (President of U.S., No. 1621.)

—— Relief of Chinese Government, report to accompany H. R. 8221; submitted by Mr. Capper. Feb. 26, 1923. (1923.) 5 p. (Senate report 1223, 67th Cong., 4th sess.) Paper, 5 c.

—— Treaty between China and Japan for settlement of outstanding questions relating to Shantung, with agreement supplementary thereto, concluded at Washington, Feb. 4, 1922; presented by Mr. Lodge. (1922.) 14 p. (Senate doc. 166.)

—— Treaty between United States and China confirming application of 5 per cent. *ad valorem* rate of duty to importations of goods into China by citizens of United States, signed Washington, Oct. 20, 1920, proclaimed Nov. 7, 1921. (1922.) [1] + 19 p. (State Dept., Treaty Series, No. 657.)

—— See also *Japan*.

Citizenship. See *Nationality*.

Colombia. Treaty between United States and Colombia, settlement of differences, signed Bogota, April 6, 1914, proclaimed March 30, 1922. (1922.) [1] + 6 p. (State Dept., Treaty Series, No. 661.) [Eng. and Sp.]

Commercial treaties. Handbook of commercial treaties, digests of commercial treaties, conventions, and other agreements of commercial interest between all nations [with bibliography]. (1922.) xiv + 899 p. (Tariff Commission.) Paper, 75 c.

Dominican Republic. See *Haiti*.

Europe. Financial affairs of European states, in response to resolution, letter submitting information regarding revenues, expenditures, and deficits of European states available to Department of State. (1922.) vi + 20 p. (Senate doc. 274, 67th Cong., 4th sess.) Paper, 5 c.

European War, 1914–1918. Foreign relations of United States, message transmitting report from Secretary of State relative to foreign relations of United States for 1915 and "Foreign relations of United States, history of World War as shown by records of Department of State." Feb. 24, 1923. (1923.) 1 p. (Senate doc. 339, 67th Cong., 4th sess.) [Message of transmittal only.] Paper, 5 c.

Extradition. See *Great Britain*.

Foreign Relations. Foreign intercourse of United States, hearings on H. R. 9937 and H. R. 10213, Jan. 18–21, 1922. (1922.) ii + 43 p. H. of R. For. Affairs Cttee.)

—— Do. Minority report to accompany H. R. 10213; submitted by Mr. Stedman. Feb. 9, 1922. (1922.) 4 p. (House report 646, pt. 2.)

—— Foreign service of United States, report to accompany H. R. 10213 [relative to foreign intercourse of United States]; submitted by Mr. Rogers. Feb. 2, 1922. (1922.) 5 p. (House report 646, pt. 1.)

—— Do. Hearings on H. R. 12543, for reorganisation and improvement of foreign service of United States, Dec. 11–19, 1922. (1922.) ix + 99 p. (H. of R., For. Affairs Cttee.)

—— Do. Reorganisation of, report to accompany H. R. 13880; submitted by Mr. Rogers. Jan. 30, 1923. 15 p. (1923.) (House report 1479, 67th Cong., 4th sess.) Paper, 5 c.

—— Do. Do. Report to accompany H. R. 13880; submitted by Mr. Lodge. Feb. 13, 1923. (1923.) 15 p. (Senate report 1142, 67th Cong., 4th sess.) Paper, 5 c.

—— Papers relating to foreign relations of United States, with address of the President to Congress, Dec. 8, 1914. (1922.) cxv + 1132 p. Cloth, $1.25. (State Dept.)

France. See *Anglo-Japanese Alliance*, *Inter-Allied Debts*.

Germany. Agreement between United States and Germany for mixed commission to determine amount to be paid by Germany in satisfaction of Germany's financial obligations under treaty concluded between the two Governments, Aug. 25, 1921; signed Berlin, Aug. 10, 1922. (1922.) 8 p. (State Dept. Treaty Series, No. 665.) [Eng. and Ger.]

—— Treaty between United States and Germany, restoring friendly relations, signed Berlin, Aug. 25, 1921, proclaimed Nov. 14, 1921. (1922.) 10 p. (State Dept. Treaty Series, No. 658.) [Eng. and Ger. Change of title and addition of ratification.]

—— Do. and parts of Treaty of Versailles concluded June 28, 1919. (1922.) 1 + 121 p. (State Dept. Treaty Series, No. 658.)

Great Britain. Supplementary extradition convention between United States and Great Britain, signed London, May 15, 1922, proclaimed Oct. 24, 1922. (1922.) [1] + 2 p. (State Dept. Treaty Series, No. 666.)

—— See also *Aerial Co-operation*, *Anglo-Japanese Alliance*, *Canada*, *China*, *Inter-Allied Debts*.

Hague rules, the, 1921, defining liabilities of ocean cargo carriers; analysed clause by clause by A. J. Wolfe. Apr. 19, 1922. (1922.) ii + 39 p. (Trade information bulletin 19; Division of Commercial Laws.)

Haiti. Inquiry into occupation and administration of Haiti and Santo Domingo, hearings pursuant to S. Res. 112. (1922.) Pt. 3, ii + 813–1197 p.; pt. 4, ii + 1199–1445 p.; pts. 5–7, viii + 1447–1842 p. (Senate, Select Cttee. on Haiti and Dominican Republic.)

—— Do. Report pursuant to S. Res. 112; submitted by Mr. Oddie for Mr. McCormick. April 20, calendar day June 26, 1922. (1922.) 37 p. and map. (Senate report 794. 67th Cong., 2nd sess.)

—— Protocol between United States and Haiti, establishment of Claims Convention [Commission], signed Port-au-Prince, Oct. 3, 1919; presented by Mr. Pomerene. (1922.) 9 p. (Senate doc. 135.)

Haiti. Treaty between United States and Haiti, finances, economic development, and tranquillity of Haiti, signed Port-au-Prince, Sept. 16, 1915, proclaimed May 3, 1916; presented by Mr. Pomerene. (1922.) 10 p. (Senate doc. 136.)

Hungary. Treaty between United States and Hungary establishing friendly relations, signed Budapest, Aug. 29, 1921, proclaimed Dec. 20, 1921, and parts of Treaty of Trianon, concluded June 4, 1920. (1922.) [1] + 118 p. (State Dept., Treaty Series, No. 660.)

—— See also *Austria.*

Inter-Allied Debts. Foreign governments, obligations of; extract from Report of Secretary of Treasury on state of finances, fiscal year 1922. (1922.) 18 p. (Treasury Dept.) Paper, 5 c.

—— France's indebtedness to United States, adverse report to accompany H. J. Res. 452 [authorising the President to immediately take vigorous and drastic steps to enforce collection of $3,500,000,000 owed by Government of France to Government of United States, with interest thereon from time United States advanced said sum to Government of France until said sum is paid]; submitted by Mr. Porter. Feb. 26, 1923. (1923.) 1 p. (House report 1716, 67th Cong., 4th sess.) Paper, 5 c.

—— Great Britain. Refunding foreign obligations, British debt, hearings on H. R. 14235, to amend act to create commission authorised under certain conditions to refund or convert obligations of foreign Governments held by United States [so as to permit settlement of British debt to United States under terms and conditions recommended by commission], Feb. 8, 1923. (1923.) ii + 14 p. (H. of R. Ways and Means Cttee.)

—— Do. Do. Reports to accompany H. R. 14254 [to amend act to create commission authorised under certain conditions to refund or convert obligations of foreign Governments held by United States, so as to permit settlement of British debt to United States under terms and conditions recommended by commission]. (1) Submitted by Mr. Fordney, Feb. 8, 1923. (1923.) 6 p. (House report 1567, 67th Cong., 4th sess.) Paper, 5 c. (2) Submitted by Mr. McCumber, Feb. 5, calendar day Feb. 10, 1923. (1923.) 7 p. (Senate report, 1130, 67th Cong., 4th sess.) Paper, 5 c.

—— Do. Do. Proposal for funding of debt due to United States from Great Britain, address of President of United States to Congress, on report of World War Foreign Debt Commission, covering its proposal for funding of debt due to United States from Great Britain, and urging final disposition of merchant marine bill. (1923.) [1] + 5 p. (House doc. 554, 67th Cong., 4th sess.)

Japan. Japanese immigration and colonisation. Counter brief to that of V. S. McClatchy, Senate document 55, 67th Congress, 1st session, submitted in behalf of California Committee of Justice and other citizens; presented by Mr. King. (1922.) 7 p. (Senate doc. 188.)

—— Message transmitting, in response to resolution, information as to present status and binding effect of so-called Lansing-Ishii agreement, signed Nov. 2, 1917. March 7, calendar day, March 8, 1922. (1922.) 3 p. (Senate doc. 150.)

—— Treaty between United States and Japan regarding rights of the two Governments and their respective nationals in former German islands in Pacific Ocean north of the Equator, and in particular the Island of Yap, signed Washington, Feb. 11, 1922, proclaimed July 13, 1922. (1922.) [1] + 6 p. (State Dept., Treaty Series, No. 664.)

—— See also *Anglo-Japanese Alliance, China.*

Jews. Hearings on H. Con. Res. 52, expressing satisfaction at re-creation of Palestine as national home of Jewish race, April 18–21, 1922. (1922.) iii + 170 p. (H. of R. Foreign Affairs Cttee.)

—— Report to accompany H. J. Res. 322 favouring establishment in Palestine of national home for Jewish people; submitted by Mr. Fish. May 31, 1922. (1922.) 3 p. (House report 1038.)

Korea. See *China, Limitation of Armaments.*

Liberia. Hearings on H. J. Res. 270 to establish credit with United States for Government of Liberia, March 22 and 24, 1922. (1922.) Pt. 1. ii + 141 p. April 19, 1922. (1922.) Pt. 2. ii + 143–156 p. (H. of R. Ways and Means Cttee.)

—— Minority views to accompany H. J. Res. 270 to establish credit with United States for Government of Liberia; submitted by Mr. Crisp. April 26, 1922. (1922.) 5 p. (House report 924, pt. 2.)

Liberia. Report to accompany H. J. Res. 270 to establish credit with United States for Government of Liberia; submitted by Mr. Fordney. April 25, 1922. (1922.) 4 p. (House report 924 [pt. 1].)

—— Report to accompany H. J. Res. 270 to establish credit with United States for Government of Liberia; submitted by Mr. McCumber. Apr. 20, calendar day May 31, 1922. (1922.) 3 p. (Senate report 727.)

Limitation of Armament, Conference, held at Washington, Nov. 12, 1921–Feb. 6, 1922. Korea's appeal to. Presented by Mr. Spencer. (1922.) 44 p. (Senate doc. 109.)

—— Proceedings of. (1922.) (Eng. and Fr.) 1757 p. Cloth, $1.75.

—— Do. First plenary session, Nov. 12, 1921. (1922.) xxxi + 2–55 p. Fo. (Eng. and Fr.) Paper, 15 c.

—— Do. Second plenary session, Nov. 15, 1921. (1922.) 23 p. Fo. (Eng. and Fr.) Paper, 10 c.

—— Do. Third plenary session, Nov. 21, 1921. (1922.) 35 p. Fo. (Eng. and Fr.) Paper, 15 c.

—— Do. Address of President of United States at concluding session of conference, Feb. 6, 1922. (1922.) 6 p.

—— Do. Report of American delegation, submitted to the President, Feb. 9, 1922. (1922.) ii + 132 p.

—— Do. President's address to Senate, letter of Secretary of State submitting treaties to the President, invitation to conference, proceedings of plenary sessions of conference, minutes of committee on limitation of armament, minutes of committee on Pacific and Far Eastern questions, report of American delegation, including treaties and resolutions, with index. (1922.) 935 p. (Senate doc. 126.)

—— Treaties and resolutions approved and adopted by conference, submitted by President of United States for advice and consent to their ratification. (1922.) 44 p. (Senate doc. 124.)

Do. Address of President of United States in laying before the Senate a group of treaties negotiated by conference, Feb. 10, 1922. (1922.) 10 p. Paper, 5 c.

—— Do. Address submitting treaties and resolutions approved and adopted by conference, together with report of American delegation of proceedings of conference, submitted to the President Feb. 9, 1922. (1922.) xiii + 132 p. (Senate doc. 125.)

—— Do. Four-Power Treaty and supplementary agreement, response to resolution asking for information relating to. Feb. 20, 1922. (1922.) 1 p. (Senate doc. 130.)

—— Do. Report submitting information in regard to ratification of six treaties known as Armament Conference Treaties. Jan. 3, 1923. (1923.) 2 p. (Senate doc. 282, 67th Cong., 4th Sess.) Paper, 5 c.

—— War Ships. Report to accompany H. Res. 347, making in order motion for consideration of H. R. 11214 authorising the President to scrap certain vessels in conformity with provisions of treaty to limit naval armaments and for other purposes; submitted by Mr. Campbell of Kansas. May 16, 1922. (1922.) 1 p. (House report 1010.)

—— Do. Report to accompany H. R. 11214, submitted by Mr. Poindexter. April 20, calendar day June 30, 1922. (1922.) 1 p. (Senate report 802, 67th Cong., 2nd Sess.)

—— Do. Executive order directing that Secretary of Navy exercise all power and authority vested in the President by Sec. 2 of the act authorising the President to scrap certain vessels in conformity with provisions of treaty limiting naval armament and for other purposes, approved July 1, 1922. Feb. 16, 1923. (1923.) 1 p. Fo. (President of U.S. No. 3789 A.)

Lusitania claims. Report concerning American passengers on the *Lusitania* when sunk and claims filed with Department of State by American citizens as result of loss of the *Lusitania*. April 3, 1922. (1922.) 22 p. (Senate doc. 176.)

Luxemburg. Report in regard to advisability of transferring United States diplomatic representation at Luxemburg from minister at The Hague to ambassador at Brussels. April 20, calendar day July 18, 1922. (1922.) 2 p. (Senate doc. 235, 67th Cong., 2nd Sess.)

Nationality. Naturalisation and citizenship of married women: public law 193, 59th Congress: public law 346, 67th Congress. (1922.) [1] + 4 p. Paper, 5 c.

Nationality. Do. Report to accompany H. R. 12022; submitted by Mr. Vaile. June 16, 1922. (1922.) 3 p. (House report 1110.)

—— Do. Report to accompany H. Res. 370 [for immediate consideration of H. R. 12022, relative to naturalisation and citizenship of married women]; submitted by Mr. Campbell of Kansas. June 20, 1922. (1922.) 1 p. (House report 1118.)

Near East. Report of Near East Relief, year ending Dec. 31, 1921; presented by Mr. Lodge. (1922.) [1] + 29 p. (Senate doc. 192.)

Netherlands. See *Pacific Islands.*

Norway. Report in matter of arbitration of claims of Norwegian subjects against United States arising out of requisitions by Shipping Board Emergency Fleet Corporation and recommending appropriation. Jan. 9, calendar day Jan. 12, 1923. (1923.) 36 p. (Senate doc. 288, 67th Cong., 4th Sess.) [Includes award of Permanent Court of Arbitration.] Paper, 5 c.

— Report to accompany H. J. Res. 440 to satisfy award rendered against United States by arbitral tribunal established under special agreement concluded June 30, 1921, between United States and Norway in settlement of claims arising out of requisitions by Shipping Board Emergency Fleet Corporation; submitted by Mr. Madden. Feb. 10, 1923. (1923.) 3 p. (House report 1574, 67th Cong., 4th Sess.) Paper, 5 c.

—— Do., submitted by Mr. Warren. Feb. 12, 1923. (1923.) 2 p. (Senate report 1139, 67th Cong., 4th Sess.) Paper, 5 c.

Pacific islands. Letter to Henry Cabot Lodge with reference to notes delivered by Government to minister for foreign affairs of Netherlands and to Portuguese Government relative to respecting their rights in relation to their insular possessions in region of Pacific Ocean; presented by Mr. Lodge. (1922.) 3 p. (Senate doc. 128.)

—— See also *Limitation of Armament.*

Panama Canal. Abrogation of certain agreements relating to Panama Canal, report to accompany S. J. Res. 259, submitted by Mr. Winslow. Jan. 16, 1923. (1923.) 2 p. (House report 1417, 67th Cong., 4th Sess.) Paper, 5 c.

—— Do. of so-called Taft agreement and negotiation of new agreement with Panama. Letter recommending authorisation of Congress. Sept. 5, 1922. (1922.) 2 p. (Senate doc. 248, 67th Cong., 2nd Sess.) Paper, 5 c.

—— Executive order prescribing Rules of practice and procedure of United States district court in and for Canal Zone. Dec. 30, 1921. (1922.) 17 p. Fo. (President of U.S. No. 3603.)

—— Laws of Canal Zone, enacted by Isthmian Canal Commission, Aug. 16, 1904–March 31, 1914, annotated 1921; compiled and annotated by J. J. McGuigan. (1922.) Mount Hope, C. Z.: Panama Canal Press. 322 p. Cloth, $2.00; paper, $1.00.

—— Panama Canal Act. Report to accompany H. Res. 365 for immediate consideration of H. R. 11872, to amend sec. 7, 8, and 9 of Panama Canal Act, etc.; submitted by Mr. Campbell of Kansas. June 13, 1922. (1922.) 1 p. (House report 1091.)

— Treaties and acts of Congress relating to Panama Canal, annotated 1921; compiled and annotated by J. J. McGuigan. (1922.) Mount Hope, C. Z.: Panama Canal Press. 258 p. Cloth, $2.00; paper, $1.00.

—— Do. Supplements 1 and 2. (1923.) p. 259–79, and [1] + 280.

Pan-American Union. Bulletin. (Monthly.) Annual Subs.: Eng. ed., $2.50; Sp. ed., $2.00; Port. ed., $1.50.

Permanent Court of International Justice. Letter relative to proposed adherence to protocol establishing International Court of Justice at The Hague, presented by Mr. Lodge. (1923.) [1] + 5 p. (Senate doc. 342, 67th Cong., 4th Sess.) Paper, 5 c.

—— Message transmitting letter from Secretary of State and asking consent of Senate to adhesion of United States to protocol under which Permanent Court of International Justice has been erected at The Hague. Feb. 24, 1923. (1923.) 20 p. (Senate doc. 309, 67th Cong., 4th Sess.) Paper 5 c.

Philippine Islands. Filipino appeal for freedom, Philippine Parliamentary Mission's statement of actual conditions in Philippine Islands and summary of Philippine problems. Dec. 18, 1922. (1922.) 90 p. (House doc. 511, 67th Cong., 4th Sess.) Paper, 10 c.

Portugal. See *Pacific Islands.*

Postal Conventions. Pan-American Postal Union, principal convention of Buenos Aires, Sept. 15, 1921, with detailed regulations for its execution. (1922.) iv + 22 p. [Sp. and Eng.]

—— Universal Postal Union, convention of Madrid, Nov. 30, 1920, with detailed regulations for its execution. Reprint with additions. (1922.) iv + 163 p. [Fr. and Eng.]

—— See also *Canada, Siam.*

Russia. Letter from Secretary of State transmitting statement received by State Department from Boris Bakhmeteff, Russian ambassador, in regard to transactions brought into question in Senate relative to advances made by United States Treasury to provisional government of Russia. April 20, calendar day May 6, 1922. (1922.) 2 p. (Senate doc. 200.)

Siam. Parcel post convention between United States and Siam, signed Washington, Feb. 24, 1922, Bangkok, Oct. 15, 1921, approved Feb. 28, 1922. (1922.) [1] + 7 p.

Trading with the enemy act and amendments thereto, including act of Dec. 27, 1922. Jan. 18, 1923. (1923.) iii + 73 p. Paper, 10 c.

—— Alien property and its relation to trade, commerce, and American claims, speech by Thomas W. Miller, alien property custodian, Jan. 14, 1922; presented by Mr. Winslow. May 27, 1922. (1922.) 5 p. (House doc. 322.)

—— Executive order supplemental to Executive order of Oct. 12, 1917, vesting power and authority in designated officers, and making rules and regulations under trading with the enemy act [approved Oct. 6, 1917] and title 7 of [espionage] act approved June 5 [15], 1917 [conferring further power and authority upon Alien Property Custodian in conformity with act of March 4, 1923, to amend trading with the enemy act, especially as regards return of enemy property]. March 5, 1923. (1923.) 1 p. Fo. (President of U. S. No. 3804.)

—— Hearing before subcommittee on S. 3852, to amend act to define, regulate, and punish trading with the enemy, and for other purposes, as amended [relative to adjudication by commission of American war claims against Germany and Austria and use of enemy property held by Alien Property Custodian in payment of such claims]. (1922.) ii + 42 p. (Senate, Judiciary Cttee.)

—— Do. on S. 3852, to amend act to define, regulate, and punish trading with the enemy and for other purposes, as amended. (1922.) Pt. 1. (H. of R. Judiciary Cttee.)

—— Do. on S. 3852 and S. 559, bills to amend act to define, regulate, and punish trading with the enemy, and for other purposes, as amended, and S. J. Res. 225, supplementing trading with the enemy act, Jan. 10 and 11, 1923. (1923.) Pt. 2, iii + 43–78 p. (H. of R. Judiciary Cttee.)

—— Hearings on H. R. 13496, supplemental to trading with the enemy act, Dec. 21, 1922–Jan. 15, 1923. (1923.) iii + 321 p. (H. of R. Interstate and Foreign Commerce Cttee.)

—— Laws, trading with the enemy act with amendments: public law no. 91, 65th Congress; [extract from] public law no. 109, 65th Congress; public law no. 139, 65th Congress; [extract from] public law no. 181, 65th Congress; [extract from] public law no. 217, 65th Congress; [extract from] public law no. 233, 65th Congress; [extract from] public law no. 5, 66th Congress; public law no. 252, 66th Congress; public law no. 332, 66th Congress; public law no. 115, 67th Congress; public law no. 372, 67th Congress; public resolution no. 64, 66th Congress; public resolution no. 8, 67th Congress; [extract from] President's proclamation. Aug. 24, 1921; [extract from] President's proclamation, Aug. 25, 1921. (1923.) [1] + 46 p. Paper, 5 c.

War. Plan to outlaw war, by Salmon O. Levinson; presented by Mr. Borah. (1922.) 12 p. (Senate doc. 115.)

War Ships. See *Limitation of Armament.*

Washington Conference. See *Limitation of Armament.*

Women. See *Nationality.*

Yap. See *Japan.*

SUMMARY OF EVENTS[1]

May 1, 1922—April 30, 1923.

COMPILED BY THE BRITISH INSTITUTE OF INTERNATIONAL AFFAIRS.

Abbreviations.

Cmd., Great Britain, Parliamentary Papers. *C. H.*, *Current History*. *L'E. N.*, *l'Europe Nouvelle*. *L. N. O. J.*, *League of Nations Official Journal*. *T.*, *The Times*.

Afghanistan.

1922, Oct. 20. Treaty of defensive alliance with Angora Government of March 1, 1921, ratified by Afghanistan. (*T.* 16.12.22.)

Albania.

1921, Dec. 10. *De jure* independence recognised by Belgium; by Serb-Croat-Slovene Kingdom, April 1922; Portugal, May 25, 1922; Greece (reservations) July 1922; Czecho-Slovakia, July 5, 1922; United States and Spain, July 27, 1922.

July 13. Conference of Ambassadors approved fixing of frontiers between Albania and Serb-Croat-Slovene Kingdom.

Dec. 4. Postal Convention signed with Italy at Tirana.

Dec. 5. Telegraph Convention signed with Italy at Tirana.

Argentine.

1921, Aug. 31. Ratifications exchanged at Buenos Aires of workmen's compensation convention with Italy of March 26, 1920.

1922, Jan. 4. Railway agreement signed with Bolivia at La Paz.

April 25. Convention signed with Chile at Santiago providing for transandine connections between the two countries.

Aug. 18. Aeronautical convention concluded with Uruguay.

Aug. 28. Extradition treaty signed with Colombia at Buenos Aires.

Sept. 28. Ratifications exchanged at Buenos Aires of workmen's compensation convention with Spain of Nov. 27, 1919.

1923, Jan. 22. Ratifications exchanged of arbitration treaty with Ecuador signed at Caracas in 1911.

See also *Spain*, Dec. 20, 1922; *Uruguay*, Feb. 8, May 18, June 5, 1922.

Armenia. See *Russia*, Dec. 30, 1922; *Transcaucasia*.

Austria.

1921, Sept. 30. Commercial agreement signed with Roumania.

1922, Jan. 27. Agreement concluded at Graz with Czecho-Slovakia, Hungary, Italy, Poland, Roumania, and Serb-Croat-Slovene Kingdom regarding passports and visas. Ratified by Czecho-Slovakia, March 24.

Feb. 11. Convention with Czecho-Slovakia concerning double death duties signed at Vienna. Ratifications exchanged, Nov. 4, 1922.

Feb. 18. Convention with Czecho-Slovakia concerning double levies of direct taxes signed at Vienna. Ratifications exchanged, Nov. 4, 1922.

April 26. Exchange of ratifications of agreements with Hungary signed in Jan. 1922 concerning railway transport in Oedenburg.

June 27. Commercial agreement concluded with Hungary. On Feb. 20, 1923, ratifications exchanged of commercial treaty of Feb. 8, 1922.

Sept. 19. League of Nations gave decision regarding Austro-Hungarian frontier. Modifications approved later by Conference of Ambassadors. (*L. N. O. J.* Feb. 1923, p. 178.)

Oct. 4. Agreement for Austrian reconstruction adopted by League of Nations.

[1] The information given has been collected from newspapers and other sources, and it has not been possible in every case to test its accuracy. References in brackets indicate where texts or summaries of texts are to be found.

Ratifications, Austria, Dec. 2, 1922; Czecho-Slovakia, Feb. 23, 1923; France, Dec. 21, 1922; Great Britain, Dec. 16, 1922. Belgium, Italy, Spain, Sweden, Switzerland promised to participate.

Nov. 4. Ratifications exchanged of commercial agreement with Czecho-Slovakia of May 4, 1921.

1923, Feb. 24. Protocol signed with Serb-Croat-Slovene Kingdom abolishing sequestrations of property belonging to Austrian subjects.

Feb. 27. Solution reached by arbitration of West Hungary (Burgenland) question.

April 10. Arbitration Treaty concluded with Hungary.

See also *Bulgaria*, March 9, 1922; *Czecho-Slovakia*, Feb. 8 and 24, April 6, May 30 and 31, Oct. 5, 1922; *Germany*, Aug. 17, 1921; *Italy*, April 6, 1922, April 28, 1923; *Netherlands*, Jan. 3, Nov. 6, 1922; *Poland*, Sept. 25, 1922; *Reparations*, Jan. 23, 1923; *Russia*, Jan. 12, Feb. 14, 1922; *Serb-Croat-Slovene Kingdom*, Feb. 6, 1922; *Sweden*, May 25, 1921.

Azerbaijan. See *Russia*, Dec. 30, 1922; *Transcaucasia*.

Belgium.

1921, July 26. Convention signed with France at Paris regarding application to Belgians resident in France of law of July 1, 1916, concerning war profits.

Aug. 10. Agreement concluded with Egypt modifying convention of commerce and navigation of June 24, 1891. Ratifications exchanged at Cairo, June 14, 1922.

Oct. 25. Convention signed with France concerning reparation regulations.

Nov. 20. Convention signed with France at Brussels concerning assistance and repatriation.

Dec. 27. Parcel post convention concluded with United States.

Dec. 27. Telegraphic convention concluded with Luxemburg.

1922, June 13. Provisional agreement signed with Switzerland at Brussels concerning aerial communication. Ratifications exchanged, Aug. 1, 1922.

Sept. 11. Agreement concluded with Germany concerning application of Articles 36 and 37 of Treaty of Versailles.

Sept. 25. Option lists for right of retaining German nationality in districts of Eupen and Malmédy closed. Majority became Belgian subjects.

Sept. 30. Ratifications exchanged of agreement with France of Jan. 24, 1921, concerning nationality of sons of Belgians.

Dec. 30. Commercial agreement signed with Poland.

1923, Feb. 16. Convention signed with Switzerland regarding settlement of Swiss citizens in Belgian Congo.

See also *Albania*, Dec. 10, 1921; *Austria*, Oct. 4, 1922; *France*, Oct. 25, 1921, June 15, Nov. 7, 1922; *Germany*, Nov. 12, 1921; *Lithuania*, June 30, 1922; *Netherlands*, Oct. 15, 1921, April 13, July 8, 1922; *Portugal*, Sept. 9, 1922; *Sweden*, Dec. 17, 1921.

Bolivia.

1923, Feb. 21. Ratifications exchanged at La Paz of treaty of arbitration with Colombia of Nov. 13, 1918.

April 14. Ratifications exchanged of arbitration treaty with Venezuela of April 12, 1919.

See also *Argentine*, Jan. 4, 1922; *Chile*, March 25, 1923.

Brazil.

1921, Dec. 11. Agreements signed with Germany concerning reparations and seizure of *quondam* German ships.

1922, Feb. 4. Additional protocol of Dec. 7, 1921, to extradition treaty with Uruguay of Dec. 27, 1916, ratified by Brazil.

May 22. Exchange of ratifications of extradition treaty with Peru of Feb. 3, 1919.

July 29. Treaty signed with Great Britain at Rio de Janeiro respecting dual nationality and exemption from military service.

Sept. 26. Treaties signed with Portugal at Rio de Janeiro regarding: (1) dual nationality and exemption from military service; (2) literary and artistic property; (3) immigration and labour.

See also *Italy*, March 7, 1923; *Paraguay*, Feb. 24, 1922.

Bulgaria.

1922, Feb. 24. Commercial *modus vivendi* of three months' duration reached with Spain by an exchange of notes; Spain to receive most-favoured-nation treatment; Bulgaria, tariff benefits.

Mar. 9. Commercial agreements granting most-favoured-nation treatment concluded with Netherlands and Austria by an exchange of notes.
June 28. Railway convention concluded with Roumania.
July 18. Commercial agreement granting most-favoured-nation treatment concluded with Denmark by an exchange of notes.
July 28. Period fixed in Article IV of convention of Nov. 29, 1919, with Greece concerning reciprocal emigration prolonged until Oct. 15, 1923.
Aug. 18. Preliminary protocol defining Serbo-Bulgarian frontier signed by Mixed Commission. Final protocol signed Dec. 6, 1922.
Oct. 7. Portugal deposited ratification of Treaty of Peace with Bulgaria signed at Neuilly-sur-Seine on Nov. 27, 1919.
1923, March 23. Protocol concerning frontier protection signed by Serbo-Bulgarian commission at Nish.
See also *Netherlands*, March 1, 1922; *Reparations*, March 21, 1923; *Serb-Croat-Slovene Kingdom*, March 1, 1923; *Spain*, Feb. 23, 1922.

Canada.

1921, Oct. 21. Supplementary convention signed at Washington between United States and Great Britain providing for accession of Canada to real and personal property convention of March 2, 1899. Ratifications exchanged June 17, 1922. [*Cmd.* 1728.]
1922, July 3. Exchange of notes between Great Britain and Russia extending agreement of March 16, 1921, to Canada.
Dec. 22. Postal convention concluded with United States at Washington abrogating special postal convention of Jan. 12, 1888.
1923, March 2. Convention for the preservation of the halibut fishery in the North Pacific Ocean signed with United States. (See Note on p. 168.)
See also *France*, Dec. 15, 1922; *Italy*, Nov. 5, 1922; *Persia*, Feb. 18, 1922.

Chile.

1922, July 20. Protocol and agreement signed at Washington with Peru accepting arbitration of United States concerning Ancon treaty of 1895. Ratifications exchanged at Washington, Jan. 15, 1923.
1923, March 25–May 3. Fifth Pan-American Conference held at Santiago. Eighteen countries represented, excluding Bolivia, Mexico and Peru.
See also *Argentine*, April 25, 1922; *Colombia*, June 13, 1922; *Great Britain*, April 12, 1922.

China.

1922, Jan. 8. Presidential mandate abolishing Russian land frontier privileges, based on 1881 treaty, as from April 1, 1922.
March 4. United States Presidential proclamation against export of arms to China.
April 21. China ratified treaty with Persia of June 1, 1920.
June 2. Ratifications exchanged at Peking of Shantung treaty of Feb. 4, 1922.
July 9. Agreement concluded with France respecting refloating of Banque Industrielle de Chine by means of the Boxer Indemnity.
Dec. 1. Agreements signed with Japan for transfer of civil control in Tsingtao. Agreement regarding Shantung railway signed on Dec. 5. Administration of Tsingtao transferred to China on Dec. 10; Japanese troops withdrawn Dec. 17. Shantung railway formally transferred on Jan. 1, 1923.
Dec. 20. China informed that Great Britain would devote further payments of Boxer Indemnity to mutually beneficial purposes.
1923, March 10. Note sent to Japan proposing discussion for return of Manchurian leases. Japan replied refusing proposal on March 14.
See also *Mexico*, Dec. 26, 1921.

Conference of Ambassadors. See *Albania*, July 13, 1922; *Lithuania*, June 30, 1922, Feb. 16, 1923; *Poland*, Dec. 19, 1922, March 15, 1923.

Colombia.

1922, March 24. Swiss Federal Council, arbitrator in boundary dispute between Colombia and Venezuela, reached decision.
April 28. Convention signed at Montevideo with Uruguay regarding academic interchange and mutual recognition of academic degrees and certificates. Ratified by Colombia, Nov. 14, 1922.

June 13. Ratifications exchanged at Santiago of treaty with Chile of June 23, 1921, regarding academic interchange.
Nov. 14. Commercial arbitration agreement signed at Washington with United States Chamber of Commerce.
See also *Argentine*, Aug. 28, 1922; *Bolivia*, Feb. 21, 1923.

Costa Rica.

1921, Dec. 15. Additional protocol to postal treaty with France of Nov. 9, 1889, signed at Paris.
1923, March 7. Ratifications exchanged at Washington of arbitration treaty with Great Britain of Jan. 12, 1922.
See also *Nicaragua ; United States*, June 12, 1922, Feb. 8, 1923.

Czecho-Slovakia.

1921, Aug. 25. Commercial agreement concluded with Hungary.
1922, Jan. 20. Juridical agreement concluded with Germany at Prague.
Feb. 4. Statute for Silesian Teschen, Orava and Spis signed with Poland at Prague.
Feb. 8. Credit convention with Austria signed at Prague. Ratifications exchanged, Feb. 27, 1923.
April 6. Czecho-Slovakia signed twelve agreements at Rome regarding outstanding financial and other questions with the Succession States of Austria-Hungary.
April 15. Commercial agreement with Italy of March 23, 1921, prolonged for one year.
May 30. Ratifications exchanged at Prague of frontier convention with Austria of March 10, 1921.
May 31. Convention supplementing Prague agreement of May 18, 1920, with Austria concluded at Vienna by an exchange of notes.
June 1. Declaration signed with Italy concerning exchange of census statistics.
June 5. Provisional agreements concluded with Russia and Ukraine at Prague regarding reciprocal neutrality. (*L'E. N.*, 1.7.22. p. 821.) Ratified by Russia, June 22. Both came into force Aug. 7, 1922.
Aug. 31. Treaty of alliance to last five years replacing that of Aug. 14, 1920, signed at Marienbad with Serb-Croat-Slovene Kingdom. Ratified by Czecho-Slovakia, Sept. 15, 1922; by Serb-Croat-Slovene Kingdom, Oct. 23, 1922.
Sept. 12. Ratifications exchanged at Prague of treaties with Germany (1) concerning jurisdiction of nationality law; (2) economic treaty of June 29, 1920.
Sept. 23. Czecho-Slovakia ratified commercial agreement with Spain of Nov. 18 and 19, 1921.
Sept. 27. Agreement concluded with Hungary at Bratislava concerning frontier bridges. Ratifications exchanged, Nov. 18, 1922.
Oct. 5. Czecho-Slovakia ratified railway agreement concluded at Portorose on Nov. 23, 1921, with Austria, Hungary, Italy, Poland, Roumania and Serb-Croat-Slovene Kingdom.
Oct. 7. Commercial agreement concluded with Latvia. Ratified by Czecho-Slovakia, Feb. 13, 1923.
Oct. 14. Agreement concluded with Roumania at Vienna concerning public records formerly belonging to Austro-Hungarian Empire.
Oct. 28. Boundary Commission fixed frontiers between Hungary and Czecho-Slovakia except in Salgo-Tarjan district, a resolution on which was adopted by League of Nations on April 23, 1923.
Nov. 22. Commercial agreement concluded with Hungary.
Dec. 21. Agreement concluded with Italy concerning transit facilities for Czecho-Slovak goods through port of Trieste.
1923, Jan. 10. Provisional commercial agreement concluded with Greece granting most-favoured-nation treatment. Came into force in Greece on Feb. 21; in Czecho-Slovakia on Feb. 27.
March 10. Ratifications exchanged at Prague of commercial agreement with Roumania of April 23, 1921.
April 27. Commercial agreement concluded with Lithuania.
See also *Albania*, Dec. 10. 1921; *Austria*, Jan. 27, Feb. 11 and 18, Oct. 4, Nov. 4, 1922; *France*, April 7, May 24, Oct. 7 and 21, 1922; *Germany*, Dec. 31, 1921, March 18, Sept. 12, 1922; *Italy*, April 15, 1922; *Netherlands*, Jan. 20, 1923; *Poland*, June 8, July 20, Sept. 23, 1922; *Portugal*, Dec. 11, 1922; *Serb-Croat-Slovene Kingdom*, Sept. 15, 1922, March 7, 1923.

Danzig.

1921, Dec. 17. Ratifications exchanged of treaty with Germany of Nov. 8, 1920, concerning options.

1922, April 1. Provisional agreement concerning registration and disbanding of sailors at Memel and Danzig signed with France, Great Britain and Japan.

April 27. Ratifications exchanged of convention with Poland and Germany of April 21, 1921, regulating rail and water communication.

May 11. Text of constitution agreed to by High Commissioner.

1923, Jan. 27. Agreement signed with Poland regarding representation of Danzig at international conferences.

Feb. 1. Provisional agreement signed with Poland concerning interpretation of Art. 6 of agreement of May 17, 1922, regarding legal status of Polish officials in Danzig. (*L. N. O. J.* Feb. 1923, p. 156.)

Denmark.

1921, Aug. 8 and 27. Convention supplementing those of Oct. 28, Nov. 28, 1919, and June 19–26, 1920, concluded with Iceland regarding postal communication.

1922, April 25. Provisional aerial navigation agreement signed with Germany.

April 28 and June 8. Postal convention concluded with United States.

May 1. Convention signed with Great Britain at London renewing arbitration convention of Oct. 25, 1905, for a further period of five years. [*Cmd.* 1744.] Ratifications exchanged, July 28, 1922.

May 19. Postal agreement signed with Finland at Copenhagen.

June 7. Ratifications exchanged of treaty with Germany of April 10, 1922, regarding North Slesvig. Came into force on July 7.

1923, April 23. Provisional commercial agreement concluded with Russia.

See also *Bulgaria*, July 18, 1922; *Finland*, May 19, 1922, Feb. 12, 1923; *Germany*, Oct. 23, 1922; *Norway*, Dec. 22, 1922; *Russia*, April 25, 1923; *Sweden*, Nov. 7, 1922.

Dominican Republic.

1922, April 29. Dominican Republic ratified parcel post convention concluded with Spain on April 17, 1922.

Oct. 20. Proclamation terminating American occupation. Provisional Government inaugurated on Oct. 21.

Ecuador.

1922, July 18 and 25. Convention concluded with Venezuela regulating exchange of diplomatic mails.

1923, March 17. Ratifications exchanged at Quito of treaty of arbitration with Venezuela of May 24, 1921.

See also *Argentine*, Jan. 22, 1923; *Great Britain*, April 12, 1922.

Egypt.

1922, April 26. Government recognised by United States.

1923, April 19. King Fuad signed new constitution.

See also *Belgium*, Aug. 10, 1921.

Esthonia.

1921, Dec. 16. Esthonia ratified (1) commercial agreement with Ukraine of Nov. 25, 1921; (2) consular, postal, telegraph and telephone agreements with Latvia and Lithuania of July 12, 1921; latter ratified by Latvia, July 14, 1922.

1922, May 9. Agreement concluded with Russia regarding the rafting of timber. Ratified by Esthonia on June 29, 1922.

May 27. Protocol to convention of Nov. 25, 1921, signed with Ukraine. Ratified by Esthonia, Dec. 18, 1922.

June 29. Esthonia ratified commercial agreement with France of Jan. 7, 1922.

Sept. 22. Commercial and navigation agreement signed with United States.

Oct. 19. Commercial agreement granting most-favoured-nation treatment signed with Hungary at Reval.

See also *Finland*, Oct. 12, 1922; *Germany*, Dec. 11, 1922; *Poland*, March 31, 1922; *Russia*, Dec. 2, 1922.

Ethiopia. See *Greece*, Feb. 18, 1922.

Far Eastern Republic. See *Japan*, Sept. 5, 1922; *Russia*, Nov. 14, 1922.

Finland.

1922, March 4. Parcel post convention concluded with United States. Ratified by Finland, July 21, 1922; by United States, Sept. 1, 1922.

May 19–23. Postal treaties concluded by exchange of notes: with Denmark, May 19 and 22; Norway, May 19 and 23; Sweden, May 19 and 22.

June 1. Convention concluded with Russia for maintenance of order on Russo-Finnish frontier. Ratified by Finland, June 20, 1922.

June 13. Provisional telegraphic convention signed with Russia at Helsingfors. Ratified by Finland, June 20, 1922.

June 22. Postal agreement concluded with Russia. Ratified by Finland, June 30, 1922.

Aug. 12. Agreements concluded with Russia concerning repatriation and restitution of ships. Former ratified by Finland on Sept. 1, 1922.

Sept. 20–Oct. 25. Conventions concerning fishery and sealing concluded with Russia as follows: (1) in Gulf of Finland, Sept. 20; ratified by Finland, Sept. 29; (2) in territorial waters in Arctic Ocean, Oct. 20; ratified by Finland, May 11, 1923; (3) in Lake Ladoga, Oct. 25; ratified by Finland, May 11, 1923.

Oct. 12. Ratifications exchanged at Helsingfors of commercial and navigation agreement and of conventions concerning submarine cables, telegraph and telephone communications signed with Esthonia on Oct. 29, 1921.

Oct. 25. Agreements concluded with Russia concerning rafting of timber and maritime regulations in Finnish and Russian boundary waters.

1923, Feb. 6. Exchange of ratifications of economic agreement with Germany of April 21, 1922.

Feb. 12. Agreements signed with Denmark concerning extradition. Ratified by Finland on April 14, 1923.

See also *Denmark*, May 19, 1922; *Norway*, March 3, Sept. 7, 1922; *Poland*, March 31, 1922; *Russia*, Dec. 2, 1922; *Sweden*, Feb. 3, 1923.

France.

1921, Oct. 10. Agreement signed with Great Britain at London for the conveyance of mails by aeroplane.

Oct. 25. Convention signed with Belgium concerning reparation regulations.

Dec. 7 and Jan. 30, 1922. Exchange of notes at London respecting amendments to Art. 12 of provisional agreement with Great Britain regarding air navigation of Oct. 20, 1920.

1922, Feb. 2. Convention with Great Britain signed at London respecting legal proceedings. [*Cmd.* 1661.] Ratifications exchanged, May 2, 1922.

April 7. Agreement with Czecho-Slovakia signed at Paris concerning exchange of public records.

May 12. Commercial convention with Poland of Feb. 6, 1922, ratified by France.

May 24. Ratifications exchanged of convention with Czecho-Slovakia of Jan. 18, 1921, concerning desequestration.

May 24. Declaration signed with Czecho-Slovakia concerning exchange of legal documents, etc.

June 15. Ratifications exchanged at Paris of convention of Feb. 14, 1921, with Belgium regarding pension benefits for miners.

July 27. Convention concluded with Germany concerning Rhine boats. Ratifications exchanged, Oct. 16, 1922.

July 28. Commercial agreement concluded with Guatemala.

July 31. Commercial agreement with Portugal of Jan. 30, 1922, prolonged for one month; prolonged on Sept. 16 for three months, and further prolonged on Dec. 16, 1922.

Oct. 7. Convention concluded with Czecho-Slovakia at Paris respecting legal protection.

Oct. 16. Economic treaty with Uruguay of Dec. 17, 1918, prolonged pending conclusion of a new treaty.

Oct. 31. Convention concluded with Czecho-Slovakia at Paris respecting aviation.

Nov. 7. Agreement signed with Belgium at Paris concerning execution of miners' pensions convention of Feb. 14, 1921.

Nov. 13. Commercial agreement concluded with Italy.

Dec. 15. Commercial agreement signed with Canada replacing pre-war arrangement.

See also *Austria*, Oct. 4, 1922; *Belgium*, July 26, Oct. 25, Nov. 20, 1921, Sept. 30, 1922; *China*, July 9, 1922, Jan. 1, 1923; *Costa Rica*, Sept. 15, 1921; *Danzig*, April 1, 1922; *Esthonia*, June 29, 1922; *Germany*, July 23, 1921; *Great Britain*,

Aug. 1, 1922; *Hungary*, July 5, 1922; *Netherlands*, May 30, 1922; *Portugal*, Sept. 1, 1922; *Reparations; Saar Basin*, July 5, 1922; *Spain*, July 8, 1922; *Sweden*, Dec. 17, 1921; *Switzerland*, Feb. 18, 1923.

Galicia (Eastern). See *Poland*, March 15, 1923.

Georgia. See *Russia*, Dec. 30, 1922; *Transcaucasia*.

Germany.

1921, July 5. Protocol to treaty of Aug. 29, 1918, signed at Berlin with the Netherlands respecting the raising of the old mouth of the Rhine at Lobith. Ratifications exchanged on Aug. 28, 1922.

July 23. Exchange of ratifications of agreement with France of June 30, 1920, concerning the restitution of sums provided by Alsace-Lorraine for extraordinary war expenditure.

Aug. 17. Treaty with Austria signed at Berlin concerning those injured in the war and war survivors. Ratifications exchanged on April 13, 1922.

Nov. 12. Exchange of ratifications of agreement with Belgium of July 9, 1920, concerning execution of Art. 312 of Treaty of Versailles.

Dec. 31. Agreement concluded with Czecho-Slovakia concerning adjustments of direct taxation. Ratifications exchanged, Nov. 4, 1922.

1922, March 18. Agreement concluded with Czecho-Slovakia at Berlin restricting double death duties. Ratified by Czecho-Slovakia, Jan. 31, 1923.

April 29. Agreement concluded with Poland at Posen concerning frontier traffic facilities.

May 15. Agreements concluded with Poland at Geneva: (1) concerning frontier railway stations, etc.; ratifications exchanged, June 3, 1922; (2) concerning postal cheques; ratifications exchanged, June 3, 1922.

May 31. Commercial treaty with Italy in force from Sept. 1, 1921, prolonged to Feb. 28, 1923, when it was further prolonged to Nov. 30, 1923.

June 10. Ratifications exchanged at Belgrade of provisional commercial agreement with Serb-Croat-Slovene Kingdom of Feb. 4 and Dec. 5, 1921.

June 24. Dr. Rathenau, Minister for Foreign Affairs, assassinated.

July 18. Bill for defence of Republic passed in Reichstag. On July 24, Bavarian Government rejected it and substituted a separate law. Conference between Bavarian Commission and Central Government of Berlin from Aug. 9–11. Agreement reached and on Aug. 24 the Bavarian separate law was withdrawn.

July 24. Aerial agreement concluded with the Netherlands.

Sept. 12. Exchange of ratifications of three agreements concluded on June 29, 1920, with Czecho-Slovakia.

Oct. 23. Agreement concluded with Denmark regarding passport facilities for inhabitants of frontier districts and small frontier traffic.

Nov. 5. Agreement concluded with Russia extending provisions of treaty of April 16, 1922, to the Soviet Republics united with Russia.

Dec. 11. Agreement concluded with Esthonia concerning war graves.

Dec. 23. Commercial *modus vivendi* arranged with Spain prolonging existing treaty to Jan. 7, 1923; on Jan. 15, prolonged to April 30; on April 28–30, to June 30, 1923.

1923, Jan. 31. Ratifications exchanged of treaty with Russia signed at Rapallo on April 16, 1922.

March 25. Convention, supplementing that of Dec. 6, 1920, regarding mortgages and debts concluded with Switzerland.

April 28. Provisional commercial agreement concluded with Portugal.

See also *Belgium*, Sept. 11 and 25, 1922; *Brazil*, Dec. 11, 1922; *Czecho-Slovakia*, Jan. 20, Sept. 12, 1922; *Danzig*, Dec. 17, 1921, April 27, 1922; *Denmark*, April 25, 1922; *Finland*, Feb. 6, 1923; *France*, July 27, 1922; *Great Britain*, Dec. 23, 1922; *Latvia*, March 28, 1922; *Netherlands*, July 24, 1922; *Poland*, Aug. 4, 1922; *Portugal*, July 25, 1922; *Reparations; Roumania*, Dec. 6, 1922; *Saar Basin; Silesia (Upper); Switzerland*, April 25, Sept. 29, 1922.

Great Britain.

1922, March 2. Agreement with Peru regarding settlement of differences in respect of the mineral property "La Brea y Pariñas" signed at Lima.

April 12–May 31. Denunciation by Great Britain of treaties for the abolition of the slave trade as follows: with Chile (Santiago, Jan. 19, 1839 and Aug. 7, 1841) April 12; Ecuador (Quito, May 24, 1841, Cuenca, Jan. 15, 1846) April 17; Norway (Stockholm, Nov. 6, 1824 and June 15, 1835) April 25; United States (Washington,

Aug. 9, 1842, April 17, 1862, Feb. 17, 1863) April 27; Sweden (Stockholm, Nov. 6, 1824 and June 15, 1835) May 4; Netherlands (The Hague, May 4, 1818, Dec. 31, 1822, Jan. 25, 1823, Feb. 7, 1837, Aug. 31, 1848) May 9; Haiti (Port-au-Prince, Dec. 23, 1839) May 31.

April 20. Ratifications exchanged of conventions with Siam and Hungary of Dec. 20, 1921, respecting enemy debts.

May 1. Convention signed with Iceland renewing for five years the arbitration convention of Oct. 25, 1905. Ratifications exchanged at London, July 28, 1922. [*Cmd.* 1745.]

May 15. Supplementary extradition convention concluded with the United States. Ratifications exchanged July 28, 1922. [*Cmd.* 1770.]

Aug. 1. Balfour note sent to Allied Governments respecting inter-Allied debts. (*T.* 2.8.22, p. 8.) Reply of French Government, Sept. 1. (*L'E. N.*, 9.9.22, p. 1145.)

Oct. 16. Payment to United States of $50,000,000 for interest on war debt.

Oct. 25 and Nov. 28. Agreement concluded with Spain by exchange of notes abolishing passport visas for aviators and crews.

Dec. 23. Expiration of law forbidding Germans to enter England.

1923, Jan. 8. Negotiations opened at Washington regarding British debt to United States. British Government accepted American proposals on Jan. 31. President Harding approved Debt Funding Bill on Feb. 28. On March 15, British Government made a first payment of $4,128,685·74.

See also *Austria*, Oct. 4, 1922; *Brazil*, July 29, 1922; *Canada*, Oct. 21, 1921, July 1, 1922; *China*, Dec. 20, 1922; *Costa Rica*, March 7, 1923; *Danzig*, April 1, 1922; *Denmark*, May 1, 1922; *France*, Oct. 10, Dec. 7, 1921, Feb. 2, 1922; *Greece*, Feb. 3, 1922; *Hungary*, April 21, 1922; *Irak*, Oct. 10, 1922; *Italy*, May 11, Oct. 8, 1922; *Lithuania*, May 6, 1922; *Netherlands*, Jan. 23, 1923; *Norway*, Feb. 22, 1923; *Palestine; Portugal*, April 3, 1923; *Reparations; Russia*, Sept. 9, 1922; *Serb-Croat-Slovene Kingdom*, July 29, 1921; *Spain*, Oct. 31, 1922; *United States*, Oct. 18, 1922; *Uruguay*, Oct. 19, 1922.

Greece.

1922, Jan. 27 and 29. Greece notified Hungarian Government that following conventions would be revived: (1) Conventions of May 31 and June 12, 1856, respecting succession of movable property of deceased nationals; (2) declarations of July 30–Aug. 12, 1902, Aug. 5–18, 1902 and Sept. 3–16, 1904; (3) convention of March 16–28, 1874, regarding mutual extradition of deserters from the navy and mercantile marine; (4) extradition treaty of Dec. 8–21, 1904.

Feb. 3 and 8. Exchange of notes with Great Britain regarding liquidation of enemy concerns in United Kingdom and in Greece.

Feb. 18. Commercial treaty signed with Ethiopia at Addis-Ababa.

Sept. 27. Revolt of naval and military forces at Mytilene, Chios and other islands and Salonika; abdication of King Constantine; Prince George took oath of allegiance as George II. King Constantine left Greece on Sept. 30; died at Palermo on Jan. 11, 1923.

Nov. 13. Trial of Greek ex-Ministers opened. Six found guilty of treason and shot on Nov. 28.

See also *Albania*, Dec. 10, 1921; *Bulgaria*, July 28, 1922; *Czecho-Slovakia*, Jan. 10, 1923; *Italy*, Oct. 8, 1922; *Turkey*.

Guatemala. See *France*, July 28, 1922; *Nicaragua*.

Hague Conference (June–July, 1922).

1922, June 21–July 20. Conference held at The Hague in accordance with resolution passed at Genoa Conference for the further consideration of outstanding differences between the Russian Soviet Government and other Governments. Twenty-five nations attended; three sub-commissions formed to deal with Russian debts, credits and foreign-owned property. [*Cmd.* 1724.]

Haiti. See *Great Britain*, April 12, 1922.

Honduras. See *Nicaragua*.

Hungary.

1922, April 21. Extradition convention of Dec. 3, 1873 with Great Britain revived, together with modification of Art. XI thereof agreed to in London on June 26, 1901.

July 5. Agreement concluded with France at Budapest regarding application to Alsace-Lorraine of Part X of Treaty of Trianon.

See also *Austria*, Jan. 27, April 26, June 27, Sept. 19, 1922, Feb. 27, April 10, 1923; *Czecho-Slovakia*, Aug. 25, 1921, April 6, Sept. 22, Oct. 5 and 28, Nov. 22, 1922; *Esthonia*, Oct. 19, 1922; *Great Britain*, April 20, 1922; *Greece*, Jan. 27, 1922; *Latvia*, Sept. 22, 1922; *League of Nations*, Sept. 18, 1922; *Reparations*, Jan. 23, 1923.

Iceland. See *Denmark*, Aug. 8, 1921; *Great Britain*, April 20, 1922.

International Labour Office.

1922–23. Sessions of Governing Body held as follows: thirteenth, July 25–27, 1922; fourteenth, Oct. 12–13, 1922; fifteenth and sixteenth, Oct. 31, 1922; seventeenth, Jan. 30–Feb. 2, 1923; eighteenth, April 10–13, 1923.

Oct. 18–Nov. 3, 1922. Fourth session of International Labour Conference held at Geneva.

Irak.

1922, Oct. 10. Treaty of Alliance signed with Great Britain. (*T.* 12.10.22, p. 14.) Additional protocol signed on April 30, 1923, providing for termination of treaty on Irak becoming a member of the League of Nations—in any case not later than four years from the ratification of treaty of peace with Turkey.

Ireland.

1922, Dec. 5. Irish Free State Constitution Act received Royal Assent. Free State came into official being on Dec. 6.

Italy.

1922, Feb. 9. Ratifications exchanged of convention with Venezuela of Dec. 21, 1920, for settlement of claims of Italian subjects.

April 6. Six conventions signed with Austria at Rome concerning judicial and financial matters.

April 15. Commercial agreement with Czecho-Slovakia of March 23, 1921, prolonged for one year.

April 24. Agreement concluded with Angora concerning concessions for railways, mines and public works in Asia Minor.

May 11. Agreement signed with Great Britain concerning graves of British soldiers in Italy.

May 12. Commercial agreement with Poland signed at Genoa. Ratifications exchanged March 7, 1923.

May 24. Commercial agreement with Russia signed at Genoa, replacing provisional agreement of Dec. 26, 1921. Soviet Government refused to ratify on June 15.

Oct. 8. Italy denounced treaty of Aug. 10, 1920, with Greece regarding the Dodecanese. Note of protest sent by Great Britain on Oct. 15.

Oct. 23. Treaty (Santa Margherita) signed with Serb-Croat-Slovene Kingdom at Rome comprising four agreements concerning the interpretation of the Treaty of Rapallo of Nov. 12, 1920, and outstanding questions. Ratified by Italy, Feb. 22, 1923; by Serb-Croat-Slovene Kingdom on Feb. 25, under date of Feb. 22, 1923.

Nov. 5. Commercial agreement concluded with Canada.

1923, Jan. 27. Commercial agreement concluded with Switzerland.

March 7. Exchange of ratifications of convention of Oct. 8, 1921, with Brazil concerning emigration and labour.

April 28. Agreement concluded with Austria relating to traffic of Austrian goods through Trieste.

See also *Albania*, Dec. 4 and 5, 1922; *Argentine*, Aug. 31, 1921; *Austria*, Jan. 27, Oct. 4, 1922, April 28, 1923; *Czecho-Slovakia*, April 15, June 1, Oct. 5, Dec. 21, 1922; *France*, Nov. 13, 1922; *Germany*, May 31, 1922; *Poland*, Jan. 31, 1923; *Sweden*, Dec. 17 and 19, 1922; *Switzerland*, Jan. 27, 1923.

Japan.

1922, Sept. 5–24. Conference with Far Eastern Republic held at Changchun. Broke down on Russian insistence on Japanese withdrawal from North Saghalien.

1923, April 14. Ishii-Lansing agreement of Nov. 2, 1917, denounced by an exchange of notes with the United States.

See also *China*, June 2, Dec. 1, 1922, March 10, 1923; *Danzig*, April 1, 1922; *Spain*, Nov. 5, 1922; *United States*, Nov. 13, 1922.

Latvia.

1921, July 22. Convention concerning option concluded with Russia, supplementary conventions concluded on Nov. 6, 1921; ratified by Latvia, March 1, 1922.

1922, March 28. Commercial agreement concluded with Germany at Berlin granting limited most-favoured-nation treatment.

May 30. Agreement concluded with the Vatican. Ratified by Latvia, July 19, 1922.

July 7. Sanitary convention concluded with Poland.

July 28. *De jure* independence recognised by United States.

Sept. 22. Treaty of commerce and navigation concluded with Hungary.

Nov. 7. New constitution came into force. (*C.H.* Dec. 1922, p. 486.)

1923, March 16. Ratifications exchanged at Charkov of treaty of peace with Ukraine of Aug. 3, 1921.

See also *Czecho-Slovakia*, Oct. 7, 1922; *Esthonia*, Dec. 16, 1921; *Russia*, Dec. 2, 1922, April 7, 1923.

Lausanne Conference. See *Turkey*, Nov. 20, 1922, April 23, 1923.

League of Nations.

1922–23. Sessions of League of Nations Council held as follows: Eighteenth, May 11–17, 1922 (Appointment of the Presidents of the Mixed Commission and the Court of Arbitration in Upper Silesia). Nineteenth, July 17–24, 1922 (Approval of A. and B. mandates). Twentieth (Palestine mandate). Twenty-first (general questions). Twenty-second (restoration of Austria), Aug. 31–Oct. 4, 1922. Twenty-third (general questions), Jan. 29–Feb. 3, 1923. Twenty-fourth (general questions), April 17–23, 1923.

1922, Sept. 4–30. Third session of the Assembly of the League.

Sept. 10. Bolivia notified Secretariat of her withdrawal from League.

Sept. 18. Hungary admitted to membership.

See also *Austria*, Sept. 19, Oct. 4, 1922.

Limitation of Armament.

1922, Dec. 11–Feb. 19, 1923. Commission of jurists (British Empire, France, Italy, Japan, Netherlands and United States represented) met at The Hague in accordance with resolution adopted by the Washington Conference on the Limitation of Armament on Feb. 4, 1922; drew up draft codes of rules for aerial warfare and the use of radio in time of war.

Lithuania.

1922, May 6. Commercial agreement signed with Great Britain.

June 30. *De jure* independence recognised by Conference of Ambassadors; by United States and Spain on July 27; by Vatican on Nov. 10; by Belgium on Dec. 27, 1922.

Aug. 6. Lithuanian constitution proclaimed at Kovno. (*C.H.* Dec. 1922, p. 480.)

1923, Feb. 16. Conference of Ambassadors assigned sovereignty of Memel to Lithuania, subject to certain conditions. (Summary, *T.* 21.2.23, p. 11.) Lithuania accepted decision on March 13.

See also *Czecho-Slovakia*, April 27, 1922; *Esthonia*, Dec. 16, 1921; *Russia*, Dec. 2, 1922.

Luxemburg. See *Belgium*, Dec. 27, 1921; *Sweden*, Dec. 17, 1921.

Memel. See *Danzig*, April 1, 1922; *Lithuania*, Feb. 16, 1923.

Mexico.

1921, Dec. 26. Exchange of notes with China constituting an agreement for the provisional modification of the treaty of friendship, commerce and navigation on Dec. 14, 1899.

1922, April 19. Convention concerning the exchange of diplomatic mails signed at Asunción with Paraguay.

See also *Chile*, March 25, 1923; *Norway*, Nov. 21, 1922; *Sweden*, May 25, 1921.

Netherlands.

1921, Oct. 15. Postal convention concluded with Belgium at The Hague replacing that of Sept. 19, 1907, and additional protocol of April 22, 1919. Ratifications exchanged, Dec. 16, 1921.

1922, Jan. 3. Ratifications exchanged of extradition convention of Dec. 1, 1921, with Austria, reviving that of Nov. 24, 1880.

March 1 and 9. Provisional commercial agreement on the basis of most-favoured-nation treatment concluded with Bulgaria by an exchange of notes.

April 13. Ratifications exchanged at The Hague of workmen's compensation convention of Feb. 9, 1921, with Belgium.

May 30. Ratifications exchanged of convention with France of April 16, 1921, relating to credit granted by Netherlands to France.

July 8. Provisional agreement signed with Belgium at The Hague regulating aerial communication. Ratifications exchanged, Oct. 6, 1922.

July 24. Provisional agreement signed with Germany at The Hague regulating aerial communication.

Nov. 6. Convention signed at The Hague with Austria concerning the admission of Austrian consular agents in the principal colonial ports of the Netherlands. Ratifications exchanged, Feb. 27, 1923.

1923, Jan. 20. Commercial agreement granting most-favoured-nation treatment concluded with Czecho-Slovakia at The Hague.

Jan. 23. Telephone agreement concluded with Great Britain at The Hague.

See also *Bulgaria*, March 9, 1922; *Germany*, July 5, 1921, July 24, 1922; *Great Britain*, April 12, 1922; *Japan*, Nov. 12, 1921; *Portugal*, Sept. 1, 1922; *Roumania*, Dec. 18, 1922.

Nicaragua.

1922, Aug. 20. Treaty signed on U.S. cruiser *Tacoma* with Honduras and Salvador renewing and extending the general treaty of peace and friendship of Dec. 20, 1907. Costa Rica and Guatemala invited to adhere, but refused on Sept. 9 and Oct. 5 respectively.

Dec. 4–Feb. 7, 1923. Conference held at Washington between delegates of Costa Rica, Guatemala, Honduras, Nicaragua and Salvador. General treaty of peace and amity together with eleven conventions and three protocols signed.

Norway.

1922, March 3. Convention concluded with Finland concerning reindeers. Additional protocol signed on June 7. Ratifications exchanged, Dec. 22.

July 6 and 22. Agreement concluded with Switzerland regarding partial abolition of passport visas.

July 22–Aug. 29. Hearings of shipping claims of Norway against United States before arbitral tribunal established under agreement of June 30, 1921, at the Permanent Court of Arbitration at The Hague. Court decided in favour of Norway on Oct. 13. United States paid sum awarded on Feb. 26, 1923. (See Note on p. 159.)

Sept. 7. Agreement concluded with Finland concerning exchange of wireless despatches.

Nov. 21 and 29. Exchange of notes with Mexico concerning abolition of passport visas.

Dec. 22. Norway protested against Danish Bill respecting Danish sovereignty over parts of Greenland.

1923, Feb. 22. Agreement supplementing that of July 16, 1921, concerning air traffic concluded with Great Britain.

See also *Finland*, May 19, 1922; *Great Britain*, April 12, 1922; *Spain*, May 6, Oct. 7, 1922; *Sweden*, May 25, 1921.

Palestine.

1922, May 9. Agreement signed between Great Britain and United States regarding Palestine.

Sept. 11. British mandate proclaimed in Palestine. Arabs declared a day of mourning.

Paraguay.

1922, Feb. 24. Extradition treaty signed at Asunción with Brazil.

March 22. Ratifications exchanged of commercial travellers' convention with United States of Oct. 20, 1919.

Oct. 4. Ratifications exchanged of convention with Uruguay of Feb. 28, 1915, regarding law suits.

See also *Mexico*, April 19, 1922.

Permanent Court of International Justice.

1922, June 15–Aug. 12. First ordinary session held at The Hague. (For three advisory opinions given, see Note on p. 172.)

1923, Jan. 8–Feb. 7. Second (extraordinary) session. (For advisory opinion given, see Note on p. 175.)

See also *United States*, Feb. 24, 1923.

Persia.

1922, Feb. 18. Australia and Canada withdrew from the agreement signed at Teheran on March 21, 1920, modifying commercial convention of Feb. 9, 1903.
Aug. 15. Agreement signed at Washington by which Dr. Millsbaugh (economic adviser to the United States Department of State) became Administrator-General of the finances of Persia.
See also *China*, April 21, 1922.

Peru. See *Brazil*, May 22, 1922; *Chile*, July 20, 1922, March 25, 1923; *Great Britain*, March 2, 1922; *Uruguay*, Feb. 15, 1922; *Venezuela*, March 14, 1922.

Poland.

1922, March 13. Inter-Allied Commission for delimitation of West Prussia reached decision by which five villages were given to Poland.
March 31. Latvia ratified political agreement concluded at Warsaw with Finland, Esthonia and Poland on March 17, 1922.
June 8. Convention concluded with Czecho-Slovakia at Warsaw concerning exchange of census statistics.
July 20. Juridical convention concluded with Czecho-Slovakia at Warsaw.
Aug. 4. Agreement concluded with Germany at Warsaw regarding restitution rights granted by Art. 238 of Treaty of Versailles.
Sept. 23. Sanitary convention concluded with Czecho-Slovakia at Warsaw together with a convention relating to the practice of medicine.
Sept. 25. Economic agreement concluded with Austria. Ratifications exchanged Jan. 5, 1923.
Oct. 19. Commercial agreement concluded with Serb-Croat-Slovene Kingdom.
Nov. 15. Ratifications exchanged of commercial agreement concluded with Roumania by an exchange of notes of July 1 and 5, 1921.
Dec. 19. Poland authorised by Conference of Ambassadors to occupy the right bank of the Vistula as from Dec. 20.
1923, Jan. 31. Petrol convention of thirty years' duration concluded with Italy granting most-favoured-nation treatment.
March 15. Conference of Ambassadors fixed eastern frontiers of Poland, allotting to her Eastern Galicia and Vilna. (*L'E. N.* 7.4.23, p. 442.)
See also *Austria*, Jan. 27, 1922; *Belgium*, Dec. 30, 1922; *Czecho-Slovakia*, Feb. 4, Oct. 5, 1922; *Danzig*, April 27, 1922; Jan. 27, Feb. 1, 1923; *France*, May 12, 1922; *Germany*, April 29, May 15, 1922; *Italy*, May 12, 1922; *Latvia*, July 7, 1922; *Russia*, Dec. 2, 1922; *Silesia (Upper)*; *Switzerland*, June 27, 1922.

Portugal.

1922, July 25. Portugal denounced commercial agreement with Germany of Dec. 6, 1921, as from Dec. 6, 1922.
Sept. 1. Portugal denounced commercial agreement of July 5, 1894, with Netherlands.
Sept. 1. Portugal denounced copyright convention with France of July 11, 1866.
Sept. 9. Portugal denounced copyright convention with Belgium of Oct. 11, 1866.
Dec. 11. Commercial treaty concluded with Czecho-Slovakia at Lisbon granting most-favoured-nation treatment.
1923, April 3. *Modus vivendi* prolonging Part I of Transvaal-Mozambique convention (which expired on March 31, 1923) signed at Lisbon.
See also *Albania*, Dec. 10, 1921; *Brazil*, Sept. 26, 1922; *Bulgaria*, Oct. 7, 1922; *France*, July 31, 1922; *Germany*, April 28, 1923; *Sweden*, May 25, 1921.

Reparations.

1922, May 4. Reparation Commission sent note to German Government relative to German-Soviet Russian treaty of April 16, 1922.
May 31. Reparation Commission sent note to German Government confirming with reservations partial moratorium granted on March 21.
June 2. Agreement between Reparation Commission and German Government concluded at Paris relating to application of Part VIII of Treaty of Versailles. (*L'E. N.* 24.6.22, p. 790.)
June 6 and 9. Protocol to Franco-German (Gillet) agreement of March 15, 1922, signed.
June 10. Bankers' Committee appointed on May 24 decided not to recommend an international loan to Germany. (*T.* 12.6.22, p. 7.)

July 12. German Note sent to Reparation Commission asking for moratorium for cash payments until end of 1924 and other concessions. (*L'E.N.* 10.8.22, p. 1006.) On Aug. 31 Reparation Commission sent reply to Germany embodying joint proposal of Belgian and Italian Governments for acceptance of six months' Treasury bonds in settlement of reparation payments due from Germany from Aug. 15 to Dec. 15. (*T.* 1.9.22, p. 8.) Sept. 5–19, negotiations held between Belgian and German Governments respecting placing of one hundred million gold marks in foreign banks as security for bonds. Reichsbank guaranteed the bonds until June 1923. On Sept. 25, first instalment of ten bonds, covering payments due for Aug. 15 and Sept. 15, handed to Reparation Commission.

Aug. 4. Reparation Commission confirmed decision of July 5, 1922, concerning release from reparation liens of certain Austrian assets and revenues.

Aug. 7–14. Allied conference held in London. Conclusion indefinite, with exception of agreement to allow the £2,000,000 due from Germany for private claims on Aug. 15 to be paid within next four weeks. £500,000 paid by Germany on Aug. 15.

Aug. 10. Agreement reached between Germany and United States at Berlin respecting appointment of a mixed commission to discuss reparations. Commission began work on Nov. 1, 1922.

Dec. 9–11, 1922, and Jan. 2–4, 1923. Allied conferences held in London and Paris. French and British proposals irreconcilable.

Dec. 26. Reparation Commission (British delegate dissenting) declared Germany in voluntary default respecting timber deliveries. On Jan. 9 default declared respecting coal deliveries. On Jan. 10, French Government informed German Government that mission of control would be sent into Ruhr. Germany replied to French note and protested by proclamation to German people on Jan. 11. (*L'E. N.* 20.1.23, p. 87.) French occupation of Ruhr began, Jan. 11. On Jan. 13 Reparation Commission decided that payment due from Germany on Jan. 15 should be postponed to Jan. 31 pending its decision on letters received from German Government of Nov. 14 and 27, 1922. On Jan. 16 new defaults respecting coal and live-stock deliveries declared; on Jan. 26 general default declared and request for moratorium refused.

1923, Jan. 23. Reparation Commission allocated secured and unsecured debts of Austria and Hungary.

Feb. 19. Agreement reached between Great Britain and France, by which portion of railway line in British zone was handed to French.

March 21. Inter-Allied Commission and Bulgarian Government signed documents concerning Bulgarian reparations. Approved by Reparation Commission, May 1, 1923.

Roumania.

1922, May 19. Exchange of ratifications of treaty of Oct. 28, 1920, with Allied Powers, assigning Bessarabia to Roumania.

Oct. 15. Coronation of King and Queen of Roumania at Alba Julia.

Dec. 6. Agreement reached with Germany concerning restitution of gold marks deposited by Roumania at Berlin before the war; refunded Dec. 22.

Dec. 18 and 19. Provisional commercial agreement concluded with Netherlands by an exchange of notes at Bukarest.

1923, March 29. New Roumanian constitution sanctioned by King.

See also *Austria*, Dec. 30, 1921, Jan. 27, 1922; *Bulgaria*, June 28, 1922; *Czecho-Slovakia*, April 6, Oct. 5 and 14, 1922, March 10, 1923; *Poland*, Nov. 15, 1922; *Serb-Croat-Slovene Kingdom*, July 3, 1922; *Spain*, April 25, 1923; *Sweden*, Nov. 11, 1922; *Switzerland*, Feb. 13, 1923.

Russia.

1922, Jan. 12. Commercial agreement with Austria and Ukraine of Dec. 7, 1921, ratified by Soviet Republic.

Feb. 14. Ratifications exchanged at Vienna of prisoners of war convention concluded with Austria and Ukraine on Dec. 7, 1921.

Feb. 17. Economic agreement concluded at Moscow with Far Eastern Republic.

Sept. 9. Commercial agreement signed at Berlin between Mr. Leslie Urquhart and M. Krassin. Soviet Government refused to ratify, Oct. 6.

Nov. 14. Far Eastern Republic voted incorporation in Soviet Russia.

Dec. 2–12. Disarmament conference held at Moscow with Finland, Lithuania, Latvia, Esthonia and Poland. Conference closed without agreement.

Dec. 30. Treaty of confederation signed at Moscow with Ukraine, Armenia, Azerbaijan, Georgia and White Russia. (*C. H.*, March 1923, p. 955.)

1923, March 27. Death sentences passed on Archbishop Ciepliak and Mgr. Butkevitch. Sentence of former commuted, latter executed on March 31.

April 7. Frontier agreement concluded with Latvia.

April 25. Provisional agreement concluded with Denmark at Moscow renewing diplomatic and commercial relations.

See also *Canada*, July 3, 1922; *China*, Jan. 8, 1922; *Czecho-Slovakia*, June 5, 1922; *Denmark*, April 23, 1923; *Esthonia*, May 9, 1922; *Finland*, June 1, 13 and 22, Aug. 12, Sept. 20, Oct. 25, 1922; *Germany*, Nov. 5, 1922, Jan. 31, 1923; *Hague Conference; Italy*, May 24, 1922; *Japan*, Sept. 5, 1922; *Latvia*, Nov. 6, 1921.

Saar Basin.

1922, July 5. Agreement concluded with France concerning double taxation. German Government protested in note of Jan. 19, 1923, against use of certain terms as giving Saar territory appearance of an independent State.

Nov. 24. Agreement concluded with Germany concerning railway traffic. Ratified by Germany, Jan. 9; Governing Commission, Jan. 16, 1923.

1923, March 12. Provisional decree dated March 7, 1923, issued by Governing Commission enacting measures for maintenance of public order. (*L. N. O. J.*, April 1923.)

Salvador. See *Nicaragua*.

Serb-Croat-Slovene Kingdom.

1921, July 29. Agreement concluded with Great Britain at Paris respecting final disposal of ex-Austrian and ex-Hungarian tonnage.

1922, Feb. 6. Reciprocal commercial agreement with Austria of June 27, 1920, prolonged to June 30, 1922. Prolonged further on July 12 as from July 1, until definite agreement reached.

July 3. Railway agreement signed with Roumania.

Sept. 15. Commercial agreement concluded with Czecho-Slovakia at Belgrade.

1923, March 1–23. Serbo-Bulgarian Commission met at Nish. Agreement reached on frontier questions with exception of two points.

March 7. Judicial convention concluded with Czecho-Slovakia.

See also *Albania*, July 13, 1922; *Austria*, Jan. 27, 1922, Feb. 24, 1923; *Bulgaria*, Aug. 18, 1922; March 23, 1923; *Czecho-Slovakia*, April 6, Aug. 31, Oct. 5, 1922; *Germany*, June 10, 1922; *Italy*, Oct. 23, 1922; *Poland*, Oct. 19, 1922.

Siam. See *Great Britain*, April 20, 1922.

Silesia (Upper).

1922, May 15. German-Polish economic convention respecting Upper Silesia signed at Geneva. Ratifications exchanged and Interpretative Declaration signed at Oppeln on June 3. Came into force on June 15. Additional protocol signed on Oct. 21, regarding execution of Art. 224 of agreement.

June 15. Notification of frontier to German and Polish Governments by commission of experts and signature of arrangements regarding the transfer of territory. Transfer completed on July 9; powers of Inter-Allied Commission ended on July 17.

South Africa. See *Portugal*, April 3, 1923.

Spain.

1921, Dec. 29. Exchange of notes with Sweden, supplementing provisional commercial agreement concluded on June 19 and 20, 1921.

1922, Feb. 23 and 24. Commercial agreement concluded with Bulgaria by an exchange of notes.

March 23. General arbitration treaty with Uruguay signed at Madrid.

May 6. Provisional commercial agreement with Norway of Dec. 1, 1921, prolonged until May 31 by an exchange of notes. Further prolonged to June 30 on June 12.

July 8. Commercial agreement concluded with France.

Oct. 17. Commercial agreement and additional protocol respecting navigation concluded with Norway at Madrid. This agreement had been in force since Sept. 30, with retroactive effect from Sept. 1, 1922.

Oct. 31. Commercial and navigation agreement concluded with Great Britain.

Nov. 5. Spain denounced commercial agreement of Aug. 1, 1906, with United States and of March 26, 1909, with Japan.

Dec. 20. Spain ratified workmen's compensation convention with Argentine of Nov. 27, 1919.

1923, April 25 and 30. Commercial *modus vivendi* arranged with Roumania by an exchange of notes.

See also *Albania*, Dec. 10, 1921; *Argentine*, Dec. 28, 1922; *Austria*, Oct. 4, 1922; *Bulgaria*, Feb. 24, 1922; *Czecho-Slovakia*, Sept. 23, 1922; *Dominican Republic*, April 29, 1922; *Germany*, Dec. 23, 1922; *Great Britain*, Oct. 25, 1922; *Lithuania*, June 30, 1922; *Sweden*, Dec. 17, 1921; *Switzerland*, May 12, 1922; *Uruguay*, March 23, 1922.

Sweden.

1921, May 25 and April 24, 1922. Agreement concluded with Norway by exchange of notes regarding reciprocal notification of particulars concerning nationals of unsound mind. Similar agreement concluded with Austria, May 26, 1921, and April 10, 1922; Switzerland, May 27, 1921, and Nov, 29, 1921; Portugal, July 4 and Sept. 20, 1921; Mexico, July 28 and Oct. 17, 1922.

Dec. 17 and 19. Agreement concluded with Switzerland by an exchange of notes at Stockholm regarding abolition of passport visas. Similar agreement concluded with Belgium, June 27 and 30, 1922; Luxemburg, Oct. 3 and Dec. 6, 1922; France, Nov. 27 and Dec. 4, 1922; Italy, Dec. 1–Feb. 3, 1923; Spain, Feb. 26 and 27, 1923.

1922, Nov. 7. Agreement concluded with Denmark concerning air navigation. Ratifications exchanged, Jan. 16, 1923.

Nov. 11 and Dec. 18. Commercial agreement concluded with Roumania by an exchange of notes granting most-favoured-nation treatment.

1923, Feb. 3. Maritime agreement concluded with Finland at Stockholm. Further agreement replacing this signed on May 26, 1923.

See also *Austria*, Oct. 4, 1922; *Finland*, May 19, 1922; Feb. 3, 1923; *Great Britain*, April 12, 1922; *Spain*, Dec. 29, 1921.

Switzerland.

1922, April 25. Ratifications exchanged at Berne of arbitration treaty with Germany of Dec. 3, 1921.

May 12. Commercial agreement concluded with Spain at Berne.

June 27. Commercial agreement concluded with Poland.

Sept. 29. Provisional agreement concluded with Germany at Berne concerning claims in Switzerland against German life insurance companies. Ratifications exchanged, Oct. 24, 1922.

1923, Jan. 27. Provisional commercial agreement concluded with Italy at Zurich.

Feb. 13. Commercial agreement concluded with Roumania by an exchange of notes granting most-favoured-nation treatment.

Feb. 18. Referendum resulted in Swiss rejection of convention with France of Aug. 7, 1921, regarding new customs regulations abolishing the free zone of Savoy district.

Feb. 27. Extradition treaty concluded with Uruguay at Montevideo.

See also *Austria*, Oct. 4, 1922; *Belgium*, June 13, 1922, Feb. 16, 1923; *Colombia*, March 24, 1922; *Germany*, March 25, 1923; *Italy*, Jan. 27, 1923; *Norway*, July 6, 1922; *Sweden*, May 25, Dec. 17, 1921.

Transcaucasia.

1922, March 12. Treaty of alliance concluded between Armenia, Azerbaijan and Georgia.

Aug. 23. Agreement signed between Azerbaijan, Georgia and Turkey (Angora) concerning transport, postal, telegraph and consular questions.

See also *Russia*, Dec. 30, 1922.

Turkey.

1922, June 26. Mutual appointment of ambassadors by Angora Government and Persia effecting recognition.

July 30. Greek proclamation of autonomy in Anatolia.

Aug. 18–Sept. 9. Turkish offensive in Asia Minor. Military evacuation of Smyrna by Greeks completed on Sept. 9.

Sept. 11. Allied note sent to Angora Government to effect that any infringement of neutral zone of the Straits would not be tolerated.

Sept. 14. Destruction by fire of a large part of Smyrna.

Sept. 23. Allied Note sent to Angora Government proposing an immediate military conference at Mudania and inviting Turkey to a conference on Near Eastern

affairs at Venice. (*T.* 25.9.22, p. 10.) Proposal for military conference accepted on Sept. 29. (*T.* 2.10.22, p. 12.)

Oct. 3–4 and 9–11. Conference held at Mudania between Allied Generals and Turkish delegate. Agreement reached.

Nov. 1. Grand National Assembly passed resolution separating the Ottoman Caliphate and the Ottoman Sultanate.

Nov. 20–Feb. 4, 1923. Near East Conference held at Lausanne between Allies and Turks. Conference broke down on Feb. 4. (Records of proceedings and draft terms of peace. [*Cmd.* 1814.])

1923, Feb. 7. Allied warships ordered to withdraw from port of Smyrna. Allies refused and demanded withdrawal of order. Incident officially closed on Feb. 25.

March 8. Turkish counter-proposals to treaty drafted at Lausanne despatched to Allies.

March 21–27. Inter-Allied conference in London considered counter-proposals. Reply sent inviting Turkey to resume Lausanne Conference. (*T.* 2.4.23, p. 10.) Invitation accepted, April 7.

April 23. Lausanne Conference resumed.

See also *Afghanistan*, Oct. 20, 1922; *Italy*, April 24, 1922; *Transcaucasia*, Aug. 23, 1922.

Ukraine. See *Czecho-Slovakia*, June 5, 1922; *Esthonia*, May 27, 1922; *Latvia*, March 16, 1923; *Russia*, Jan. 12, Feb. 14, Dec. 30, 1922.

United States.

1922. Sept. 21. President Harding signed Fordney tariff bill.

Sept. 22. President Harding signed act relating to naturalisation and citizenship of married women. (See Note on p. 169.)

Oct. 18. British Government protested against seizure by United States of vessels occupied in illegal liquor traffic outside the three-mile limit. On Oct. 26, President Harding ordered prohibition officials not to act outside this limit.

Nov. 10. Extradition treaty, replacing treaty signed Jan. 21, 1922, concluded with Costa Rica. Ratifications exchanged, April 27, 1923.

Nov. 13. United States Supreme Court decided that Japanese were not entitled to United States citizenship. On Feb. 19, 1923, similar decision reached regarding Hindus.

1923, Jan. 10. American troops on the Rhine recalled.

Feb. 8. Protocol signed at Washington with Costa Rica affecting possible development of Nicaraguan railway route.

Feb. 24. President Harding asked Senate to approve adhesion of United States to the protocol establishing the Permanent Court of International Justice. Proposal postponed till next session of Senate.

See also *Albania*, Dec. 10, 1921; *Belgium*, Dec. 27, 1921; *Canada*, Oct. 21, 1921, March 2, 1923; *China*, March 4, 1922; *Chile*, July 20, 1922; *Colombia*, Nov. 14, 1922; *Denmark*, April 28, 1922; *Dominican Republic*, Oct. 20, 1922; *Egypt; Esthonia*, Sept. 22, 1922; *Finland*, March 4, 1922; *Great Britain*, April 12, May 15, Oct. 16, 1922, Jan. 8, 1923; *Japan*, April 14, 1923; *Latvia*, July 28, 1922; *Lithuania*, June 30, 1922; *Norway*, July 22, 1922; *Palestine*, May 9, 1922; *Paraguay*, March 22, 1922; *Persia; Reparations*, Aug. 10, 1922; *Spain*, Nov. 5, 1922; *Venezuela*, Jan. 19, 1922.

Uruguay.

1922, Feb. 8. Ratifications exchanged at Montevideo of convention of April 11, 1918, with Argentine concerning triangulation of Uruguay river.

Feb. 15. Ratifications exchanged of arbitration treaty with Peru of July 18, 1917.

March 23. General arbitration treaty with Spain signed at Madrid. Ratified by Uruguay on June 9.

May 18. Aerial navigation treaty with Argentine signed at Buenos Aires. Ratified by Uruguay on June 9.

June 5. Additional protocol to extradition treaty with Argentine of Jan. 23, 1889, ratified by Uruguay.

Oct. 19. Agreement reached with Great Britain by an exchange of notes for regulation of traffic in drugs.

See also *Argentine*, Aug. 18, 1922; *Brazil*, Feb. 4, 1922; *Colombia*, April 28, 1922;

France, Oct. 16, 1922; *Paraguay*, Oct. 4, 1922; *Spain*, March 23, 1922; *Switzerland*, Feb. 27, 1923.

Vatican. See *Latvia*, May 30, 1922; *Lithuania*, June 30, 1922.

Venezuela.

1922, Jan. 19. Extradition treaty signed at Caracas with United States.

1923, March 14. Arbitration treaty signed with Peru at Lima together with a protocol for the exchange of diplomatic mails.

See also *Bolivia*, April 14, 1923; *Colombia*, March 24, 1922; *Ecuador; Italy*, Feb. 9, 1922.

Vilna. See *Poland*, March 15, 1923.

White Russia. See *Russia*, Dec. 30, 1922.

GENERAL INTERNATIONAL AGREEMENTS.[1]

Aaland Islands: Neutralisation and Non-Fortification—Convention. (Geneva, Oct. 20, 1921.)
Accession: Czecho-Slovakia, July 24, 1922.
Ratifications: Denmark, Finland, France, Germany, Great Britain, Sweden, April 6, 1922; Esthonia * and Italy,* May 11, 1922; Poland,* June 29, 1922; Latvia,* Sept. 9, 1922.

Aerial Navigation: Convention. (Oct. 13, 1919; Protocol, May 1, 1920.)
Accession: Liberia, March 29, 1922.
Ratifications: Belgium, Bolivia, France, Great Britain, Greece, Japan, Serb-Croat-Slovene Kingdom, Siam, June 1, 1922; Portugal (Convention), June 1, 1922, (Protocol), Oct. 7, 1922.

Africa: Convention revising General Act of Berlin, Feb. 26, 1885, and General Act and Declaration of Brussels, July 2, 1890. (St. Germain-en-Laye, Sept. 10, 1919.)
Ratifications: Japan, April 6, 1922; Portugal (reservations), Oct. 7, 1922.

— Liquor Traffic—Convention and Protocol. (St. Germain-en-Laye, Sept. 10, 1919.)
Ratifications: Japan, April 6, 1922; Portugal, July 17, 1922.

Agriculture: Creation of an International Institute of, at Rome—Convention. (Rome, May 28, 1905.)
Accessions: Haiti, Latvia, Poland, July 23, 1921; Czecho-Slovakia, Feb. 11, 1922; Finland, Jan. 26, 1923.
Ratification: Denmark (excluding Greenland), Feb. 26, 1922.

Arms and Munitions: Traffic—Convention and Protocol. (St. Germain-en-Laye, Sept. 10, 1919.)
Accessions: Bulgaria, Sept. 13, 1921; Colombia, Esthonia, Netherlands, Oct. 1922.
Ratifications: Brazil, April 27, 1922; Portugal, July 17, 1922.

China: Treaties. (Washington, Feb. 6, 1922.)
(1) Principles and Policies; (2) Customs Tariff.
Ratifications: United States,* March 30, 1922; China,* April 29, 1922; British Empire,* Aug. 4, 1922; Japan,* Aug. 5, 1922; Italy,* Feb. 16, 1923.

Copyright: Revised Convention. (Berlin, Nov. 13, 1908; Protocol, Berne, March 20, 1914.)
Accession: Danzig, June 24, 1922.

Danube: Navigation on—Convention. (Paris, July 23, 1921.)
Ratifications: Austria, Belgium, Bulgaria, Czecho-Slovakia, France, Germany, Great Britain, Greece, Hungary, Italy, Roumania, Serb-Croat-Slovene Kingdom, Sept. 9, 1922.

Food Analysis: Conventions. (Paris, Oct. 16, 1912.)
(1) Unification and presentation of statistics; (2) Creation of an international chemistry bureau.
Ratifications: Argentine, France, Italy (1), Portugal, Uruguay, Oct. 24, 1922.

Freedom of Transit: Convention. (Barcelona, April 20, 1921.)
Ratifications: Bulgaria, July 11, 1922; Great Britain, Ireland, India, Newfound-

[1] The place and date of signature are given in brackets. The date given for ratification is that of deposit except where indicated thus: * when the date is that of ratification only.

land, New Zealand, Aug. 2, 1922; Italy, Aug. 5, 1922; Denmark, Nov. 13, 1922; Finland, Jan. 29, 1923.

HAGUE CONVENTIONS. (The Hague, Oct. 18, 1907.)
(1) Pacific settlement of disputes; (2) Limitation of armed force in recovery of contracted debts; (3) Opening of hostilities; (4) Laws of land warfare; (5) Neutrals in land warfare; (6) Status of enemy merchant ships; (7) Conversion of merchant ships; (8) Submarine mines; (9) Bombardments; (10) Geneva convention in naval war; (11) Right of capture; (12) Establishment of an international prize court; (13) Neutral powers in naval war; (14) Projectiles and explosives.
Accessions: Latvia, Netherlands (10) April 1, 1922; Poland (1) May 26, 1922; Finland (all except 12) June 9, 1922; Czecho-Slovakia (1) June 12, 1922.

INDUSTRIAL PROPERTY: Protection—Convention. (Paris, March 20, 1883; Revisions: Brussels, Dec. 14, 1900, Washington, June 2, 1911.)
Accession: Luxemburg, May 12, 1922. Notification that Convention is binding: Hungary, May 29, 1922.

— False Indications of Origin of Goods: Agreement. (Madrid, April 14, 1891; Revision: Washington, June 2, 1911.)
Accession: Danzig, Jan. 31, 1923.

— Rights affected by the World War: Agreement. (Berne, June 30, 1920.)
Accession: Poland, Sept. 13, 1921.

— Trade Marks Registration: Convention. (Madrid, April 14, 1891; Revisions: Brussels, Dec. 14, 1900, Washington, June 2, 1911.)
Accessions: Germany, Oct. 19, 1922; Danzig, Feb. 1, 1923.
Notification that Convention is binding: Hungary, May 29, 1922.

LABOUR: Draft Conventions. (Washington, Nov. 28, 1919.)
(1) Limitation of hours of work; (2) Unemployment; (3) Employment of women before and after childbirth; (4) Night work of young persons employed in industry; (5) Minimum age for admission of children to industrial employment; (6) Night work of women.
Ratifications: Bulgaria (1–6) Feb. 14, 1922; Czecho-Slovakia (1, 5, 6) Aug. 24, 1921; Denmark and Faroë Islands (4, 5) Jan. 4, 1923; Esthonia (2, 4, 5, 6) Dec. 20, 1922; India (1, 2, 4, 6) July 14, 1921; Italy (2, 4, 6) April 10, 1923; Japan (2) Nov. 23, 1922; Netherlands (4, 5, 6) Sept. 4, 1922; Roumania (1–6) June 13, 1921; Spain (2, 3) July 3, 1922; Switzerland (5) Oct. 2, 1922.

— Draft Conventions. (Genoa, June 15–July 10, 1920.)
(1) Minimum age for admission of children to employment at sea; (2) Unemployment indemnity in case of loss or foundering of the ship; (3) Facilities for finding employment for seamen.
Ratifications: Bulgaria (1–3) March 16, 1923; Esthonia (1–3) March 3, 1923; Finland (3) Oct. 7, 1922; Japan (2, 3) Nov. 23, 1922; Netherlands (1) Jan. 13, 1923; Roumania (1) May 8, 1922.

— Draft Conventions. (Geneva, Oct. 25–Nov. 19, 1921.)
(1) Minimum age for admission of children to employment in agriculture; (2) Rights of association in agriculture; (3) Workmen's compensation in agriculture; (4) Use of white lead in painting; (5) Application of the weekly rest in industry; (6) Minimum age for admission of young persons to employment as trimmers and stokers; (7) Compulsory medical examination of children and young persons employed at sea.
Ratifications: Bulgaria (6) March 16, 1923; Denmark (3) Feb. 26, 1923; Esthonia (1, 2, 3, 4, 6, 7) Sept. 8, 1922; India (2, 5) May 11, 1923, (6, 7) Nov. 20, 1922.

LATIN MONETARY UNION: Convention. (Paris, Nov. 6, 1885; Additional Protocol, Paris, Dec. 9, 1921.)
Ratifications: Belgium, France, Greece, Italy, Switzerland, June 15, 1922.

LEAGUE OF NATIONS: Amendments to Articles 4, 6, 12, 13, 15, 16, 26 of Covenant—Protocols. (Geneva, Oct. 5, 1921.)
Signatures: Bolivia, April, 1922; Costa Rica, April, 1922; Czecho-Slovakia, March, 1922; Greece, March 9, 1922; Haiti, April 18, 1922; Italy (Art. 6) May 17, 1922; Liberia, April 15, 1922; Panama, April 15, 1922; Paraguay, April, 1922.
Ratifications: British Empire, including Australia, Canada, India, New Zealand, South Africa (Arts. 4, 6, 13, 15, 26) Nov. 23, 1922 and Feb. 3, 1923; Bulgaria * (Arts. 4, 12, 13, 15, 16, 26) Oct. 4, 1922; China; Cuba (Arts. 4, 6,

12, 13, 15, 26); Denmark, Aug. 11, 1922; Finland,* April 14, 1923; Greece * (Arts. 4 and 6) April 9, 1923; Hungary, Italy (Arts. 4, 12, 13, 15, 16, 26) Aug. 5, 1922; Japan, Netherlands,* April 4, 1923; Norway, March 29, 1922; Poland * (Arts 4, 6, 12, 13, 15, 26) Dec., 1922; Siam * (Arts. 12, 13, 15, 26) Sept. 12, (Arts. 4, 6, 16) Dec., 1922; Sweden, Aug. 24, 1922; Switzerland, March 2, 1923.

LIMITATION OF ARMAMENT: Treaties. (Washington, Feb. 6, 1922.)
(1) Limitation of naval armament; (2) Protection of lives of neutrals and non-combatants at sea in time of war and prevention of use in war of noxious gases and chemicals.
Ratifications: United States,* March 29, 1922; British Empire,* Aug. 4, 1922; Japan,* Aug. 5, 1922; Italy,* Feb. 16, 1923.

LITERARY AND ARTISTIC WORKS: Protection of—Convention. (Berne, Sept. 9, 1886; Revision: Nov. 13, 1908; Additional Protocol, March 20, 1914.)
Accessions: Brazil, Feb. 9, 1922; Hungary, Feb. 14, 1922; Danzig, June 24, 1922.
Ratification: Belgium (Protocol) Nov. 4, 1921.

MARITIME CONVENTIONS. (Brussels, Sept. 23, 1910.)
(1) Collisions; (2) Salvage at sea.
Accessions: Argentine, April 15, 1922; Belgium, June 15, 1922; Poland, Danzig (1) July 15, 1922.
Notification that Convention is binding: Hungary.

MATCHES: White Phosphorus—Convention. (Berne, Sept. 26, 1906.)
Accessions: Belgium, Dec. 8, 1922; Esthonia, Feb. 2, 1923.

NAVIGABLE WATERWAYS: Convention and Protocol. (Barcelona, April 20, 1921.)
Accessions: Nyasaland and Tanganyika (Paragraph b. of the additional Protocol) June 23, 1922; Bahamas, Barbados, British Guiana, Jamaica (including Turks and Caicos Islands and Cayman Islands), Leeward Islands, Trinidad and Tobago, Windward Islands, Gibraltar, Malta, Cyprus, Gambia, Sierra Leone, Nigeria, Gold Coast, Ashanti, Kenya, Uganda, Zanzibar, St. Helena, Ceylon, Mauritius, Seychelles, Hong Kong, Straits Settlements, Fiji, Gilbert and Ellice Islands, British Solomon Islands, Tongan Islands, (Paragraph a. of the additional Protocol) June 23, 1922.
Ratifications: Bulgaria, July 11, 1922; Great Britain, Ireland, India, Newfoundland, New Zealand, Aug. 2, 1922; Italy, Aug. 5, 1922; Denmark, Nov. 13, 1922; Finland, Jan. 29, 1923.

OBSCENE PUBLICATIONS: Repression—Convention. (Paris, May 4, 1910.)
Accessions: Czecho-Slovakia, Dec. 8, 1921; Danzig, Aug. 22, 1922; Finland, April 14, 1923.
Notice that Convention is binding: Austria, April 26, 1922; Hungary, May 15, 1922.

OPIUM CONVENTION: Second Protocol. (The Hague, Jan. 23, 1912.)
Accessions: Lithuania, April 7, 1922; Finland, April 12, 1922; Esthonia, May 19, 1922.
Ratifications: Luxemburg,* Aug. 21, 1922; Salvador, Sept. 19, 1922; Chile, Jan. 16, 1923.

PACIFIC: Insular Possessions and Insular Dominions in the Pacific Ocean—Treaty. (Washington, Dec. 13, 1921; Supplement, Washington, Feb. 6, 1922.)
Ratifications: United States,* March 24 and March 27, 1922; British Empire,* Aug. 4, 1922; Japan,* Aug. 5, 1922; Italy,* Feb. 16, 1923.

PERMANENT COURT OF INTERNATIONAL JUSTICE: Protocol and Optional Clause. (Geneva, Dec. 16, 1920.)
Ratifications: Finland,* Jan. 28, 1922; Esthonia,* June 21, 1922.

POSTAL: Universal Postal Union. (Madrid, Nov. 30, 1920.)
(1) Universal postal convention; (2) Letters, etc., of declared value; (3) Money orders; (4) Parcel post; (5) Payment on delivery; (6) Postal subscriptions to newspapers; (7) Postal transfers.
Accessions: Albania (1–7) Feb. 23, 1922; Guatemala (1–7) Aug. 12, 1922; Latvia (3, 5, 6, 7) July 8, 1922; San Marino (1–7) May 30, 1922 as from Jan. 1, 1922; Tanganyika (1) Oct. 6, 1922.
Ratifications: Australia * (1) Aug. 17, 1921, (1-final protocol) Nov. 23, 1921; Belgium * (1–7) 1922; Belgian Congo * (1) March 22, 1922; Bulgaria (1, 2, 3, 4, 6) Dec. 16, 1921; Colombia * (1–7) Nov. 18, 1922; Denmark for Iceland (1–7) July 27, 1922; Dominican Republic (4) April 27, 1923; Ecuador (1, 4) Dec. 10, 1921; Esthonia (1, 2, 4) July 10, 1922; Ethiopia (1–7)

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— Hispanic-American Convention. (Madrid, Nov. 13–15, 1920.)
Ratifications: Brazil,* Feb. 24, 1923; Colombia,* Dec. 15, 1921; Costa Rica, July 5, 1922; Ecuador,* Dec. 10, 1921; Honduras, Aug. 29, 1922; Nicaragua,* May 3, 1922; Peru,* Nov. 15, 1921; United States, June 5, 1922.

— Pan-American Convention. (Buenos Aires, Sept. 15, 1921.)
(1) Principal convention; (2) Parcel post; (3) Money orders.
Ratifications: Argentine (1–3) Aug. 14, 1922; Brazil (1–3) July 15, 1922; Costa Rica (1, 2) Sept. 12, 1922, (3) Sept. 20, 1922; Dominican Republic (1) Sept. 12, 1922; Ecuador * (1–3) Dec. 1, 1922; Guatemala * (1–3) Aug. 12, 1922; Mexico (1, 2) July 31, 1922; Nicaragua * (1–3) Feb. 16, 1922; Paraguay * (1–3); Salvador (1–3) Sept. 30, 1922; United States (1, 2); Uruguay * (1–3) Nov. 22, 1922.

— Radio-Telegraph Convention—Revised. (London, July 5, 1912.)
Accessions: Cameroons, March 7, 1923; Latvia, Dec. 7, 1921; Poland, Sept. 21, 1922; Switzerland, Jan. 31, 1923.
Notification that Convention is binding: Hungary, June 9, 1922.

— Telegraph Convention. (St. Petersburg, July 22, 1875; Revision: Lisbon, June 11, 1908.)
Accessions: Albania, Jan. 23, 1922; Esthonia, Aug. 7, 1922; Poland, April 28, 1922.

Red Cross: Amelioration of the Lot of the Wounded and the Sick—Convention. (Geneva, Aug. 22, 1864.)
Accessions: Czecho-Slovakia, Jan. 18, 1922; Afghanistan, April 4, 1923; Latvia, April 8, 1923.

— Revised Convention. (Geneva, July 6, 1906.)
Accessions: Albania, Aug. 24, 1922; Ecuador, Dec. 7, 1922; Afghanistan, April 4, 1923; Latvia, April 8, 1923.

Refrigeration: International Institute of—Convention. (Paris, June 21, 1920.)
Accession: Bulgaria, Oct. 23, 1922.
Ratifications: Denmark, Netherlands, Portugal, March 1, 1922; Siam, May 20, 1922; Luxemburg, May 26, 1922; France, July 29, 1922; Czecho-Slovakia, Nov. 6, 1922; Switzerland, Nov. 10, 1922; Great Britain, Jan. 24, 1923; Spain, March 8, 1923.

Right to a Flag of States having no Sea-coast: Declaration. (Barcelona, April 20, 1921.)
Accessions: Finland, Sept. 22, 1922; Australia, Canada, South Africa, Oct. 24, 1922; Roumania, Feb. 22, 1923.
Ratifications: Bulgaria, July 11, 1922; Great Britain, Ireland, India, Newfoundland, New Zealand, Oct. 9, 1922; Denmark, Nov. 13, 1922.

Sanitary: Convention. (Paris, April 3, 1894.)
Accession: Czecho-Slovakia, June 4, 1921.

— Revised Convention. (Paris, Dec. 3, 1903.)
Accessions: Czecho-Slovakia, June 4, 1921; Austria, April 26, 1922; Poland, May 12, 1922; Danzig, May 29, 1922.

— Revised Convention. (Paris, Jan. 17, 1912.)
Accession: Austria, Dec. 17, 1921.
Ratifications: Luxemburg, June 28, 1922; Bulgaria, Dec. 7, 1922.

Traffic of Goods by Rail: Convention. (Berne, Oct. 14, 1890; Revisions: Sept. 20, 1893, July 16, 1895, June 16, 1898, Sept. 19, 1906.)
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Accession: Czecho-Slovakia, June 21, 1922.

Ratifications : United States,* Jan. 5, 1923; Uruguay,* Feb. 2, 1923; Switzerland, Feb. 5, 1923; Denmark, Feb. 10, 1923; Sweden, Feb. 16, 1923; Great Britain, Feb. 21, 1923.

White Slave Traffic : Agreement. (Paris, May 18, 1904.)

Accessions : Czecho-Slovakia, June 8, 1921; Monaco, July 2, 1921; Kenya, Nyasaland, Straits Settlements, Nov. 4, 1921; Siam, Dec. 28, 1921; Morocco, Tunis, Jan. 1, 1922; Finland, Sept. 27, 1922.

Notification that Agreement is binding : Hungary, June 7, 1922.

Ratification : Greece,* Oct. 10, 1922.

— Convention. (Paris, May 4, 1910.)

Accessions : Czecho-Slovakia, June 8, 1921; Bahamas, Ceylon, Cyprus, Fiji, Gibraltar, Hong Kong, Jamaica, Kenya, Malta, Nyasaland, Southern Rhodesia, Straits Settlements, Trinidad, Nov. 4, 1921; Curaçao, Surinam, Nov. 14, 1921; Norway, Dec. 2, 1921; Siam, Dec. 28, 1921; French Colonies, Morocco, Tunis, Jan. 1, 1922; India, March 27, 1922; Austria, April 26, 1922; Barbados, British Honduras, Granada, St. Lucia, St. Vincent, Seychelles, Northern Rhodesia, Sept. 18, 1922; Finland, Sept. 27, 1922.

Notification that Convention is binding : Hungary, June 7, 1922.

Ratification : Greece,* Oct. 20, 1922.

— Traffic in Women and Children—Convention. (Geneva, Sept. 30, 1921.)

Accessions : Hungary, March 30, 1922; Germany, March 31, 1922; Panama, Sept. 6, 1922; Bahamas, Barbados, British Honduras, Ceylon, Cyprus, Gibraltar, Granada, Hong Kong, Kenya, Malta, Northern Rhodesia, Nyasaland, St. Lucia, St. Vincent, Seychelles, Southern Rhodesia, Straits Settlements, Trinidad, Sept. 18, 1922; Finland, Sept. 27, 1922; British Guiana, Fiji, Oct. 24, 1922; Denmark, March 12, 1923.

Ratifications : Belgium, June 15, 1922; Great Britain, Australia, Canada, India, New Zealand, South Africa, June 28, 1922; Siam, July 13, 1922; Austria, Aug. 9, 1922; Norway, Aug. 16, 1922; Greece, April 9, 1923; Cuba, May 7, 1923.

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